



COUNCIL CHAMBERS

17555 PEAK AVENUE MORGAN HILL CALIFORNIA 95037

COUNCIL MEMBERS	REDEVELOPMENT AGENCY
Dennis Kennedy, Mayor	Dennis Kennedy, Chair
Steve Tate, Mayor Pro Tempore	Steve Tate, Vice-Chair
Larry Carr, Council Member	Larry Carr, Agency Member
Mark Grzan, Council Member	Mark Grzan, Agency Member
Greg Sellers, Council Member	Greg Sellers, Agency Member

WEDNESDAY, APRIL 6, 2005

AGENDA

JOINT MEETING

CITY COUNCIL SPECIAL AND REGULAR MEETING

and

REDEVELOPMENT AGENCY SPECIAL MEETING

6:00 P.M.

A Special Meeting of the City Council and Redevelopment Agency is Called at 6:00 P.M. for the Purpose of Conducting Closed Sessions.

Dennis Kennedy, Mayor/Chairman

CALL TO ORDER

(Mayor/Chairperson Kennedy)

ROLL CALL ATTENDANCE

(City Clerk/Agency Secretary Torrez)

DECLARATION OF POSTING OF AGENDA

Per Government Code 54954.2

(City Clerk/Agency Secretary Torrez)

6:00 P.M.

City Council Action and Redevelopment Agency Action

CLOSED SESSION:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority: Government Code Sections 54956.9(b) & (c)
Number of Potential Cases: 4

2.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION:

Authority: Pursuant to Government Code 54956.9(a)
Case Name: City of Morgan Hill v. Howard Vierra
Case Number: Santa Clara County Superior Court, Case No. 1-04-CV-026723

3.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION:

Authority: Pursuant to Government Code 54956.9(a)
Case Name: General Lighting Service, Inc. v. Wells Construction Group, et al. [Consolidated
Actions]
Case Number: Santa Clara County Superior Court, Lead Case No. 1-04-CV-025561

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

RECONVENE

CLOSED SESSION ANNOUNCEMENT

7:00 P.M.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PROCLAMATION

Donation of Third Street Bridge Improvements for
Morgan Hill Grand Prix
WebCor Representative

RECOGNITIONS

Teacher of the Year 2003-2004
Megan Bergantz, Leland High School
Leonore Robledo, Willow Glen High School

PRESENTATION

Bob Eltgroth
Retiring Bicycle and Trails Committee Member

CITY COUNCIL REPORT

Mayor Pro Tempore Tate

CITY COUNCIL SUB-COMMITTEE REPORTS

CITY MANAGER'S REPORT

CITY ATTORNEY'S REPORT

OTHER REPORTS

PUBLIC COMMENT

NOW IS THE TIME FOR COMMENTS FROM THE PUBLIC REGARDING ITEMS NOT ON THIS AGENDA.

(See notice attached to the end of this agenda.)

**PUBLIC COMMENTS ON ITEMS APPEARING ON THIS AGENDA WILL BE TAKEN AT THE TIME
THE ITEM IS ADDRESSED BY THE COUNCIL. PLEASE COMPLETE A SPEAKER CARD AND
PRESENT IT TO THE CITY CLERK.**

(See notice attached to the end of this agenda.)

**PLEASE SUBMIT WRITTEN CORRESPONDENCE TO THE CITY CLERK/AGENCY SECRETARY. THE
CITY CLERK/AGENCY SECRETARY WILL FORWARD CORRESPONDENCE TO THE CITY
COUNCIL/REDEVELOPMENT AGENCY.**

City Council Action

CONSENT CALENDAR:

ITEMS 1-16

The Consent Calendar may be acted upon with one motion, a second and the vote, by each respective Agency. The Consent Calendar items are of a routine or generally uncontested nature and may be acted upon with one motion. Pursuant to Section 5.1 of the City Council Rules of Conduct, any member of the Council or public may request to have an item pulled from the Consent Calendar to be acted upon individually.

Time Estimate

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Consent Calendar: 1 - 10 Minutes

1. **RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (MEASURE C) COMPETITION THIRD YEAR PHASING REQUESTS** 9
Recommended Action(s): Adopt Resolution Approving Third Year Phasing into Fiscal Year 2008-2009 for Projects in the 2004-2005 Micro, Small Project and Open/Market Rate Competitions.
2. **APPOINTMENT TO LIBRARY COMMISSION** 15
Recommended Action(s):
 1. **Re-Appoint** Jeanne Gregg to the Library Commission to Serve a Two-Year Term, Expiring April 1, 2007; and
 2. **Direct** the City Clerk to Recruit to Fill a Vacancy on the Library Commission.

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Time Estimate	
Consent Calendar: 1 - 10 Minutes	
3. <u>ORDINANCE AMENDING SECTION 2.22.010 OF THE MUNICIPAL CODE DELETING THE REFERENCE TO THE PERSONNEL COMMISSION AND RENAMING THE LIBRARY COMMISSION</u>	16
Recommended Action(s):	
1. Waive the First and Second Reading of the Ordinance; and	
2. Introduce the Ordinance Amending Section 2.22.010 of the Morgan Hill Municipal Code to Delete the Reference to the Personnel Commission and Renaming the Library Commission to Library, Culture and Arts Commission.	
4. <u>UTILITIES AND ENVIRONMENT COMMITTEE MINUTES</u>	19
Recommended Action(s):	
1. Review Minutes; and	
2. Pull Items for Additional Discussion, as Needed.	
5. <u>REVISED REIMBURSEMENT AGREEMENT FOR UNDERGROUNDING OF OVERHEAD UTILITIES BY SHAW DEVELOPMENT (ALSO KNOWN AS: SHAW REAL ESTATE, INC.)</u>	21
Recommended Action(s):	
1. Appropriate \$281,828 from the Unappropriated Underground Utility Fund Balance (350); and	
2. Approve the Amended Reimbursement Agreement; Thereby Approving Reimbursement of \$47,040 to Developer, and Payment of \$234,788 to PG&E for Undergrounding Overhead Utilities along the South Side of East Dunne Avenue, West of Walnut Grove.	
6. <u>ACCEPTANCE OF DONATION FOR THIRD STREET BRIDGE IMPROVEMENT BY WEBCOR BUILDERS</u>	22
Recommended Action(s): Accept Donation by Webcor Builders, Inc. for Improvements to the Third Street Bridge.	
7. <u>ACCEPTANCE OF 2004-2005 SIDEWALK, CURBS AND GUTTER REMOVAL AND REPLACEMENT PROJECT</u>	23
Recommended Action(s):	
1. Accept as Complete the 2004-2005 Sidewalk, Curb and Gutter Removal and Replacement Project in the Final Amount of \$94,027; and	
2. Direct the City Clerk to File the Notice of Completion with the County Recorder's Office.	
8. <u>FINAL MAP APPROVAL FOR COYOTE ESTATES PHASE X (TRACT 9680)</u>	25
Recommended Action(s):	
1. Approve the Final Map, Subdivision Agreement, and Improvement Plans;	
2. Authorize the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; and	
3. Authorize the Recordation of the Map and the Subdivision Improvement Agreement, Following Recordation of the Development Improvement Agreement.	
9. <u>FINAL MAP ACCEPTANCE FOR MORGAN LANE PHASE IV (TRACT 9601)</u>	26
Recommended Action(s):	
1. Approve the Final Map, Subdivision Agreement, and Improvement Plans;	
2. Authorize the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; and	
3. Authorize the Recordation of the Map and the Subdivision Improvement Agreement, Following Recordation of the Development Improvement Agreement.	

Time Estimate
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10. **APPROVAL OF SUPPLEMENTAL IMPROVEMENT AGREEMENT WITH SOUTH VALLEY DEVELOPERS**..... 27
Recommended Action(s):
1. **Approve** the Supplemental Improvement Agreement with South Valley Developers, Inc.; and
2. **Authorize** the City Manager to Sign the Supplemental Improvement Agreement for Construction of Lift Station G, Subject to Review and Approval by the City Attorney.

11. **AGREEMENT WITH PG&E FOR DEPOT STREET UTILITIES UNDERGROUNDING PROJECT**..... 28
Recommended Action(s): Authorize the City Manager to Execute an Agreement, Subject to City Attorney Review and Approval, with PG&E in the Amount of \$47,500 to Perform Initial Engineering Design Work for the Depot Street Utilities Undergrounding Project.

12. **REIMBURSEMENT FOR UNDERGROUNDING OF OVERHEAD UTILITIES AND STORM DRAIN PIPE REPLACEMENT BY T.K. SINGH AND PARMINDER SINGH**..... 29
Recommended Action(s): Authorize the Reimbursement of \$58,144 for Undergrounding of Overhead Utilities and Storm Drain Pipe Replacement by T.K. and Parminder Singh.

13. **AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF SHUTE, MIHALY, & WEINBERGER, LLP**..... 30
Recommended Action(s): Authorize the City Manager to Execute an Amendment to Agreement with the Law Firm of Shute, Mihaly, and Weinberger, LLP.

14. **ADOPT ORDINANCE NO. 1716, NEW SERIES**.....31
Recommended Action(s): Waive the Reading, and **Adopt** Ordinance No. 1716, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1616, NEW SERIES, TO GRANT ONE ADDITIONAL YEAR FOR THE CONSTRUCTION OF A 3,253 SQUARE FOOT DRIVE-THRU FAST FOOD RESTAURANT AND A SIT DOWN RESTAURANT 5,000 TO 6,500 SQUARE FEET IN SIZE AT THE NORTHWEST QUADRANT OF COCHRANE ROAD AND HIGHWAY 101 (APNs 726-33-023 & -024) (ZAA-02-18: COCHRANE – IN-N-OUT BURGER).**

15. **ADOPT ORDINANCE NO. 1717, NEW SERIES**.....34
Recommended Action(s): Waive the Reading, and **Adopt** Ordinance No. 1717, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH A PRECISE DEVELOPMENT PLAN FOR A 17 UNIT SINGLE FAMILY PROJECT LOCATED BETWEEN AND ADJACENT TO PEAR DRIVE AND JEAN COURT ALONG THE WEST SIDE OF HILL ROAD. (APN 728-07-47, 728-07-48, 728-07-49, 728-07-50, 728-07-51, 728-08-014, 728-08-015) (ZA-04-15: HILL – GERA).**

Time Estimate
Consent Calendar: 1 - 10 Minutes

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16. [ADOPT ORDINANCE NO. 1718, NEW SERIES](#).....37
Recommended Action(s): **Waive** the Reading, and **Adopt** Ordinance No. 1718, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-17: HILL - GERA (APN 728-07-47, 728-07-48, 728-07-49, 728-07-50, 728-07-51, 728-08-014, 728-08-015) (DA-04-04: HILL - GERA).**

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

ITEMS 17-19

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17. [APPROVE JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF MARCH 16, 2005](#)..... 40
18. [APPROVE JOINT REGULAR REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING MINUTES OF MARCH 23, 2005](#) 57
19. [APPROVE JOINT SPECIAL REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING MINUTES OF MARCH 23, 2005](#) 74

City Council Action

PUBLIC HEARINGS:

Time Estimate

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20. 5 Minutes [WATER CONSERVATION SUBMETERING ORDINANCE](#) (Continued from March 16, 2005).....76
Public Hearing Opened.
Please Limit Your Remarks to 3 Minutes. Public Hearing Closed
Council Discussion.
Action- **Continue** the Public Hearing to April 20, 2005.
21. 10 Minutes [ZONING AMENDMENT, ZA-05-02: TEXT AMENDMENT – MONUMENT SIGNS/FORD MOTOR COMPANY](#) (Continued from March 16, 2005).....77
Public Hearing Opened.
Please Limit Your Remarks to 3 Minutes. Public Hearing Closed
Council Discussion.
Action- **Motion to Waive** the Reading in Full of Ordinance to Make a Text Amendment to the Sign Code.
Action- **Motion to Introduce** Ordinance by Title Only. (Roll Call Vote)

PUBLIC HEARINGS:

	Time Estimate		Page
22.	15 Minutes	<p><u>ZONING AMENDMENT, ZA-04-22: CITY OF MORGAN HILL-ACREAGE REQUIRED FOR ANIMALS</u> (Continued from March 16, 2005).....82</p> <p>Public Hearing Opened. Please Limit Your Remarks to 3 Minutes. Public Hearing Closed Council Discussion.</p> <p>Action- If No Substantive Changes are Desired from the First Reading of Ordinance No. 1714 on March 2, 2005, then <u>Motion to Adopt</u> Ordinance No. 1714, New Series, as Introduced on March 2, 2005.</p> <p><u>OR</u></p> <p>Action- If Substantive Changes to Ordinance No. 1714, New Series are Desired, then <u>Motion to Waive</u> the Reading in Full of alternate Ordinance to Approve Text Amendments to Chapter 6.36 of the Municipal Code.</p> <p>Action- <u>Motion to Introduce</u> alternate Ordinance by Title Only. (Roll Call Vote)</p> <p>Action- <u>Motion to Take No Action</u> on Ordinance No. 1714, New Series.</p>	

City Council Action

OTHER BUSINESS:

	Time Estimate		Page
23.	20 Minutes	<p><u>AWARD CONTRACT FOR CONSTRUCTION OF INDOOR RECREATION CENTER (IRC) AND APPROVE CONSULTANT AGREEMENTS FOR PROFESSIONAL SERVICES</u>.....92</p> <p><u>Recommended Action(s):</u></p> <ol style="list-style-type: none"> 1. <u>Approve</u> Project Plans and Specifications; 2. <u>Award</u> Construction Contract to West Bay Builders, Inc. in the Amount of \$15,778,000 for Base Bid and Additive Alternate #4 (Acoustical Partition); 3. <u>Authorize</u> the City Manager to Execute a Consultant Agreement with Biggs Cardosa Associates, Inc. for Special Inspections and Materials Testing Services, Subject to Review and Approval by the City Attorney; 4. <u>Authorize</u> the City Manager to Execute a Consultant Agreement with Pacific Geotechnical Engineering for Earthwork Observation and Soil Testing Services, Subject to Review and Approval by the City Attorney; and 5. <u>Authorize</u> the City Manager to Execute a Consultant Agreement with Nova Partners, Inc. for Construction Management Services, Subject to Review and Approval by the City Attorney. 	

City Council and Redevelopment Agency Action

OTHER BUSINESS:

	Time Estimate		Page
24.	10 Minutes	<u>DISPOSITION OF ACTON MUSEUM</u>	93
		<u>Recommended Action(s):</u>	
		1. <u>Direct</u> the Executive Director to Pursue Staff Recommended Options #2 and #5 Concurrently;	
		2. If Options #2 and #5 Become Infeasible, <u>Direct Staff</u> to Pursue Option #3; and	
		3. <u>Direct Staff</u> to Periodically Report Progress to Agency Board.	

FUTURE COUNCIL-INITIATED AGENDA ITEMS:

Note: in accordance with Government Code Section 54954.2(a), there shall be no discussion, debate and/or action taken on any request other than providing direction to staff to place the matter of business on a future agenda.

ADJOURNMENT



CITY COUNCIL STAFF REPORT

MEETING DATE: April 6, 2005

RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (MEASURE C) COMPETITION THIRD YEAR PHASING REQUESTS

RECOMMENDED ACTION(S):

Adopt Resolution approving third year phasing into Fiscal Year 2008-2009 for Projects in the 2004-05 Micro, Small Project and Open/Market Rate Competitions.

EXECUTIVE SUMMARY: On March 1, 2005, the Planning Commission approved the award and distribution of building allocations under the City's Residential Development Control System for micro, small and open/market rate residential projects for Fiscal Years 2006-2007 and 2007-08. The approved distributions are consistent with the guidelines established for the competitions by the City Council in June 2004.

In accordance with Section 18.78.125 (C) of the RDCS ordinance, in the event that an applicant seeks a higher number of allocations than is available in a competition, the City Council may, in its discretion and in order to encourage high-scoring applicants to complete their projects, grant allotments for an additional fiscal year. For a one year competition, the allotment may be allocated over two years, and for a two-year competition, the allotment may be allocated over three years.

As in past competitions, the Planning Commission is recommending the City Council approve an additional or third year allocation to allow applicants to complete their projects. As shown in the attached "Recommended Distribution for Fiscal Year 2008-09", a third year allocation would allow four residential projects to be completed in FY 08-09. The Commission is also recommending that a portion of the FY 08-09 allocation be awarded to new higher scoring projects to give these developments a sufficient number of units to start and be economically viable. The "unallocated" units shown in the attached recommended distribution will be awarded to new or on-going projects in RDCS competitions conducted next year.

The Planning Commission voted 4-2 to recommend Council approval of the third year distribution. Commissioners voting against the recommendation felt that a greater portion of the FY 08-09 allotment should remain unallocated for new projects in next year's competition and to accommodate any possible reductions in the number of allocations that can be awarded. The total allocation for each RDCS competition is based on a formula using the most recent State Department of Finance (DOF) population estimate. Depending on the rate of population growth, it is possible that fewer than 250 units will be available for distribution in FY 2008-09.

Staff and the Planning Commission recommend approval of the third year phasing requests by adoption of the attached Resolution.

FISCAL IMPACT: No budget adjustment required.

Agenda Item # 1

Prepared By:

Planning Manager

Submitted By:

City Manager

Approved March 1, 2005

APPROVED DISTRIBUTION

FISCAL YEAR 2007-2008

Vertical Mixed Use 10 (unallocated)

Affordable Competition: 50 (unallocated)

Micro Competition: (9 to 06/07)

MMC-04-09: Taylor – Murray 2

Small Project Competition:

MC-04-17: San Pedro – Alcini 4

MC-04-27: Wright – Dividend 9

Open Market Competition:

MP-02-03: Tilton – Glenrock/Shea 15

MC-04-12: E. Dunne – Dempsey 5

MC-04-13: Barrett – Odishoo 5

MC-04-14: Central – Hu 5

MC-04-19: E. Main – Thrust 5

MC-04-22: Jarvis – So. Valley Developers 13

MC-04-25: Peet – Lupine Investors 6

MC-04-26: Mission View – Mission Ranch 15

MC-04-21: Barrett – Syncon 13

MC-04-04: Diana – Chan 13

Downtown Area Open Market:

80 (unallocated)

Total 250

RECOMMENDED DISTRIBUTION

FISCAL YEAR 2008-2009

Vertical Mixed Use	10 (unallocated)
Affordable Competition:	60 (unallocated)
Micro Competition:	3 (unallocated)
MMC-04-09: Taylor – Murray	3
Small Project Competition:	
MC-04-17: San Pedro – Alcini	8
	4 (unallocated)
Open Market Competition:	
<i>MP-02-03: Tilton – Glenrock/Shea</i>	<i>15 (completed)</i>
MC-04-12: E. Dunne – Dempsey	8
MC-04-13: Barrett – Odishoo	13 (completed)
MC-04-14: Central – Hu	15 (completed)
MC-04-19: E. Main – Thrust	8
MC-04-22: Jarvis – So. Valley Developers	15
MC-04-25: Peet – Lupine Investors	12 (completed)
MC-04-26: Mission View – Mission Ranch	15
MC-04-21: Barrett – Syncon	5
MC-04-04: Diana – Chan	5
	10 (unallocated)
Downtown Area Open Market:	
	40 (unallocated)
Total	250

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING THIRD YEAR PHASING REQUESTS FOR PROJECTS AWARDED RESIDENTIAL DEVELOPMENT CONTROL SYSTEM ALLOTMENTS IN THE FISCAL YEAR 2004-2005 MICRO, SMALL AND OPEN/MARKET RATE COMPETITIONS.

WHEREAS, the Planning Commission has received twenty four project applications requesting residential building allotments pursuant to Chapter 18.78 of the Morgan Hill Municipal Code; and

WHEREAS, pursuant to Resolution No.5800, the City Council has authorized allotments to be awarded to new and on-going residential projects in separate Micro, Small Project and Open/Market Rate Competitions to be held in Fiscal Year 2004-05; and

WHEREAS, on March 1, 2005, the Planning Commission adopted Resolutions approving the award and distribution of the building allocations in the above competitions for Fiscal Year 2006-07 and Fiscal Year 2007-08; and

WHEREAS, the Planning Commission recommends that certain projects awarded a building allotment receive approval to phase a portion of their building allotment into a third fiscal year;

WHEREAS, pursuant to Section 18.78.125(f) of the Morgan Hill Municipal Code, the City Council has the authority to approve phasing of building allocations into the a second or third year;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CITY OF MORGAN HILL THAT:

SECTION 1: Pursuant to Section 18.78.125(F), the Council hereby approves the third year phasing of the new residential projects as set forth in the attached exhibit "A." The additional allocation awarded to these projects shall be subtracted from the limited allotment authorized under Measure C for the 2008-2009 Fiscal Year.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 6th Day of April, 2005 by the following vote.

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

🦉 CERTIFICATION 🦉

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on April 6, 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT "A"
THIRD YEAR DISTRIBUTION
FISCAL YEAR 2008-2009

Micro Competition:

MMC-04-09: Taylor – Murray	3
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Small Project Competition:

MC-04-17: San Pedro – Alcini	8
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Open Market Competition:

<i>MP-02-03: Tilton – Glenrock/Shea</i>	<i>15</i>
MC-04-12: E. Dunne – Dempsey	8
MC-04-13: Barrett – Odishoo	13
MC-04-14: Central – Hu	15
MC-04-19: E. Main – Thrust	8
MC-04-22: Jarvis – So. Valley Developers	15
MC-04-25: Peet – Lupine Investors	12
MC-04-26: Mission View – Mission Ranch	15
MC-04-21: Barrett – Syncon	5
MC-04-04: Diana – Chan	5

Total	<u>122</u>
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CITY COUNCIL STAFF REPORT

April 6, 2005

Agenda Item # 2

Prepared By:

**Council Services &
Records Manager**

Submitted By:

City Manager

APPOINTMENT TO LIBRARY COMMISSION

RECOMMENDED ACTION(S):

- 1) Re-appoint Jeanne Gregg to the Library Commission; Serving a Two-Year Term, expiring April 1, 2007; and
- 2) Direct the City Clerk to recruit to fill a vacancy on the Library Commission

EXECUTIVE SUMMARY:

The Municipal Code currently authorizes the City Council to appoint up to nine citizens to serve on the Library Commission. At the Council's meeting of February 2, 2005, the Council agreed to establish commission membership to no more than seven individuals. For those commissions with more than seven members, the Council agreed to reduce the number to seven through attrition, as terms expire. The Library Commission currently has nine citizens serving on the Library Commission with four members with terms expiring April 1, 2005. Keeping this direction in mind, the City Clerk's office solicited to fill two vacancies on the Library Commission. Staff used City Connections; the City's Government Access Channel and the Morgan Hill Times as a means to communicate and recruit to fill these vacancies. Jeanne Gregg submitted an application for re-appointment to the Library Commission. No other applications were received. The Mayor is recommending that the Council re-appoint Ms. Gregg to serve a two-year term on the Library Commission. Should the Council wish to interview Ms. Gregg, the Council can direct staff to schedule a date/time to interview her.

Also, on February 2, 2005, the Council transferred from the Parks and Recreation Commission to the Library Commission the responsibility for "cultural facilities" and included a new responsibility for "public art." Based on these added responsibilities, the Council renamed the Library Commission to the "Library, Culture and Arts Commission." As the responsibility for public art has been added to the charge of the Library, Culture and Arts Commission, staff will emphasis recruitment efforts to fill the remaining vacancy to individuals interested in "public art." Changing the name from the "Library Commission" to the "Library, Culture and Arts Commission" is being recommended under a separate staff report via an ordinance amendment to various sections of the Municipal Code.

FISCAL IMPACT: There is no fiscal impact associated with this staff report.



CITY COUNCIL STAFF REPORT

MEETING DATE: April 20, 2005

Agenda Item # 3

Prepared By:

HR Director

Submitted By:

City Manager

ORDINANCE AMENDING SECTION 2.22.010 OF THE MUNICIPAL CODE DELETING THE REFERENCE TO THE PERSONNEL COMMISSION AND RENAMING THE LIBRARY COMMISSION

RECOMMENDED ACTIONS:

1. Waive First and Second Reading of the ordinance.
2. Introduce ordinance amending Section 2.22.010 of the Morgan Hill Municipal Code to delete the reference to the Personnel Commission, and Rename the Library Commission to the Library, Culture and Arts Commission.

EXECUTIVE SUMMARY:

On April 29, 2003, the City Council adopted Ordinance 1613 which deleted Chapter 2.48 (Personnel Commission) of Title 2 (Administration and Personnel) of the Municipal Code. This action abolished the Personnel Commission. A copy of that ordinance is attached as Exhibit A.

It has been discovered that a reference to the Personnel Commission remains in Section 2.22.010 A 2 of the Municipal Code. This ordinance will delete the sole reference to the Personnel Commission in the Municipal Code.

The Council has also agreed to rename the Library Commission to the Library, Culture and Arts Commission. This ordinance incorporates that name change. Other changes to the commissions may be recommended following the submittal of work plans.

FISCAL IMPACT:

There is no fiscal impact.

ORDINANCE NO. _____, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 2.22.010 (Establishment of boards and commissions) OF CHAPTER 2.22 (Master Provisions for Boards and Commissions) OF TITLE 2 (Administration and Personnel) DELETING REFERENCE TO THE PERSONNEL COMMISSION AND RENAMING THE LIBRARY COMMISSION.

WHEREAS, the City Council of the City of Morgan Hill adopted Ordinance No. 1613 deleting Chapter 2.48 (Personnel Commission) of Title 2 (Administration and Personnel) of the Municipal Code on April 29, 2003, and

WHEREAS, a reference to the personnel commission, which no longer exists, remains in Section 2.22.010 (Establishment of boards and commissions) of Chapter 2.22. (Master Provisions for Boards and Commissions) of Title 2 (Administration and Personnel) of the Municipal Code, and

WHEREAS, amending Section 2.22.010 to remove that reference in order to maintain accuracy within in the Municipal Code.

NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AND ENACT AS FOLLOWS:

Section 1. Section 2.22.010 (Establishment of boards and commissions) of Chapter 2.22 (Master Provisions for Boards and Commissions) of Title 2 (Administration and Personnel) is amended to read as follows:

“Section 2.22.010 Establishment of boards and commissions.

- A. There are established within the city the following boards and commissions:
 - 1. Planning commission;
 - 2. ~~Personnel commission;~~
 - 3.2. Mobile home rent advisory commission;
 - 4.3. Parks and recreation commission;
 - 5.4. Architectural and site review board; and
 - 6.5. ~~Library commission.~~ ***Library, culture and arts commission.***
- B. Unless otherwise set forth, all members of boards and commissions shall be residents of and registered voters in the city and shall continue to be qualified electors in and residents of the city during their terms of office. The city council, upon making a finding to the effect that there are no qualified residents applying for a seat upon a board or commission, may appoint an individual who is not a city resident but who is a registered voter of Santa Clara County and residing within the city’ s sphere of influence.
- C. Members shall be appointed by a majority of the city council and may be removed without cause by vote of any three members of the city council.

- D. The appointment terms of members may be extended, at the discretion of the city council, until such time as a successor member may be appointed and take office."

Section 2. **Severability.** Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 3. **Effective Date; Posting.** This ordinance shall take effect thirty (30) days after its second reading. This ordinance shall be posted at City Hall.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 6th Day of April 2005, and was finally adopted at a regular meeting of said Council on the Day of April 2005, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of April 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:_____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: April 6, 2005

UTILITIES AND ENVIRONMENT COMMITTEE MINUTES

RECOMMENDED ACTION(S):

1. Review Attached Minutes
2. Pull Items For Additional Discussion As Needed

EXECUTIVE SUMMARY: The City's new Utilities and Environment Committee met on March 21. At this meeting, the Committee made the following decisions:

1. Approved the minutes of February 28;
2. Accepted an informational report on perchlorate;
3. Recommended approval of the annual solid waste rate adjustment;
4. Directed staff to prepare a draft mission statement and workplan;
5. Reviewed the April agenda.

If a member of the City Council desires additional information on Committee actions, would like to provide input to the Committee on issues before the Committee, or would like the full Council to discuss an issue to ensure that the Committee's decisions are consistent with the full Council's interests, this item presents the opportunity to pull the item from the Consent Calendar in order to have the discussion.

The Committee meets next on April 18 with the following items planned for the agenda:

Perchlorate Update
Community Choice Aggregation
Water Conservation Design Ordinance
Update on Development Planned Along Local Creeks
Committee Mission
Solid Waste Program Changes
Cell Tower Siting
Wireless Internet Access
Earth Day Activities
Approval of Draft Minutes

FISCAL IMPACT: No budget adjustment is requested at this time.

Agenda Item # 4

Prepared By:

Program Administrator

Approved By:

Public Works Director

Submitted By:

City Manager



17555 PEAK AVENUE MORGAN HILL, CALIFORNIA 95037

Morgan Hill Civic Center
West Conference Room
17555 Peak Avenue
Morgan Hill, California

Chairperson: Council Member Mark Grzan
Subcommittee Member: Mayor Dennis Kennedy
Staff: Director of Public Works Jim Ashcraft

UTILITIES AND ENVIRONMENT SUBCOMMITTEE

ACTION MINUTES

March 21, 2005

5:30 p.m.

CALL TO ORDER

DECLARATION OF POSTING OF AGENDA

PUBLIC COMMENTS

BUSINESS:

1. Approval of the Minutes of February 28, 2005: Draft minutes approved without revision.
2. Perchlorate Update: Informational report accepted.
3. Solid Waste Rate Adjustment: Committee recommended approval of the adjustment which will be brought to the Council in April. Staff was asked to identify ways to obtain some concessions from South Valley for the loss of convenience associated with the Transfer Station's ultimate move.
4. Community Choice Aggregation: Tabled until next month
5. Update on Current Development Planned Along Local Creeks: Tabled until next month
6. Water Conservation Design Ordinance: Tabled until next month
7. Subcommittee Mission and Workplan: Staff was asked to prepare a draft.
8. Future Environmental Issues: None
9. Draft April Agenda: Informational report accepted.

FUTURE SUBCOMMITTEE-INITIATED AGENDA ITEMS: None

ADJOURNMENT



CITY COUNCIL STAFF REPORT

MEETING DATE: *April 6, 2005*

REVISED REIMBURSEMENT AGREEMENT FOR UNDERGROUNDING OF OVERHEAD UTILITIES BY SHAW DEVELOPMENT (AKA: SHAW REAL ESTATE, INC.)

RECOMMENDED ACTION:

1. Appropriate \$281,828 from unappropriated Underground Utility fund balance (350); and
2. Approve attached amended Reimbursement Agreement, thereby approving reimbursement of \$47,040 to developer, and payment of \$234,788 to PG&E for undergrounding overhead utilities along the south side of E. Dunne Avenue west of Walnut Grove.

EXECUTIVE SUMMARY: Shaw Development developed the property along E. Dunne Avenue that includes Tutor Time nursery school and the mini-storage facility on San Benancio Way. As part of the project, the developer was required to underground the overhead utilities across the Dunne Avenue frontage of the project.

The City has an opportunity to complete the utility undergrounding along E. Dunne from San Benancio Way to Walnut Grove by entering into a cooperative agreement with Shaw Development. Under the terms of the proposed reimbursement agreement, an additional 540 lineal feet of overhead utility lines along Dunne Ave. to the east of the Shaw project site will also be placed underground. This work will be done to complete the final section of undergrounding of overhead utilities along this area of E. Dunne Ave. The developer is requesting reimbursement for the undergrounding work that will be done across the adjacent portion and reimbursement of half the cost for the work across the project frontage in accordance with City policy.

On April 7, 2004, the City Council approved a similar reimbursement agreement; however, the developer was not able to begin the undergrounding work before their agreement with PG&E expired. Shaw has since renewed their agreement with PG&E which comes with an adjusted cost estimate for PG&E's work. In addition, the underground contractor's cost estimate has also been adjusted.

The cost for this undergrounding work beyond the responsibility of the developer is \$281,828. Most of this expense is for the actual PG&E conversion costs (\$234,788) and will be paid by the City as a joint check to Shaw Development and PG&E. The remaining portion (\$47,040) will be reimbursed to the developer upon completion of the construction and approval by the City and PG&E. This project will be funded from our Underground Utility Fund (350).

Staff recommends that the City approve the Reimbursement Agreement and allocate the funds from the Underground Utility Fund.

FISCAL IMPACT: The total City cost of \$281,828 will be appropriated from unappropriated Underground Utilities fund balance (350).

Agenda Item #5

Prepared By:

Deputy Director PW

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: APRIL 6, 2005

ACCEPTANCE OF DONATION FOR 3RD STREET BRIDGE IMPROVEMENT BY WEBCOR BUILDERS

RECOMMENDED ACTION(S):

Accept donation by Webcor Builders Inc. for Improvements to the 3rd Street Bridge.

EXECUTIVE SUMMARY:

In January of 2005, Greg Miller of Webcor Builders Inc. approached the Public Works Department expressing interest in improving the 3rd Street Bridge west of Monterey Road. Webcor proposed a safety repair to the bridge to improve the course for the Morgan Hill Grand Prix bike race, which will be held in downtown Morgan Hill on April 10, 2005.

Public Works staff worked with Mr. Miller to coordinate, review and oversee the improvements to the 3rd Street Bridge. The improvements included removal of existing wood decking, installation of new pressure treated wood decking and new asphalt abutments for smoother transitions. The asphalt work was performed by Duran & Venables paving contractor. The cost for these improvements including materials and labor are estimated at \$10,000.

In accordance with Administrative Policy V 009 "Donation Policy", donations with estimated values of \$5,000 or more must be formally accepted by City Council. In accordance with this policy the Director of Public Works has evaluated this donation and has found it acceptable.

Staff has provided a Proclamation acknowledging the generous donation made by Webcor Builders Inc.

FISCAL IMPACT:

None

Agenda Item # 6

Prepared By:

Associate Engineer

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: April 6, 2005

ACCEPTANCE OF 2004-2005 SIDEWALK, CURB & GUTTER REMOVAL AND REPLACEMENT PROJECT

RECOMMENDED ACTION(S):

1. Accept as complete 2004-2005 Sidewalk, Curb & Gutter Removal and Replacement Project in the final amount of \$94,027.
2. Direct the City Clerk to file the attached Notice of Completion with the County Recorder's office.

EXECUTIVE SUMMARY:

The contract for the 2004-2005 Sidewalk, Curb & Gutter Removal and Replacement Project was awarded to QLM, Inc., by the City Council at their November 14, 2004 meeting in the amount of \$94,553. The overall project resulted in the removal and replacement of 3950 SF of sidewalk, 505 LF of curb and gutter, 4 driveways, 1 handicap access ramp and asphalt concrete patching.

The work has been completed in accordance with the plans and specifications and project was completed in a timely fashion.

FISCAL IMPACT:

This project is budgeted in the 2004-05 Street Maintenance Budget. The allocated project construction cost including a 10% contingency was \$104,110. The contract was awarded in the amount of \$94,553 and the final contract price is \$94,027.

Agenda Item # 7

Prepared By:

Assistant Engineer

Approved By:

Public Works Director

Submitted By:

City Manager

Record at the request of
and when recorded mail to:

CITY OF MORGAN HILL
CITY CLERK
17555 Peak Avenue
Morgan Hill, CA 95037

RECORD AT NO FEE PURSUANT TO GOVERNMENT CODE SECTION 27383

NOTICE OF COMPLETION
CITY OF MORGAN HILL

2004-2005 SIDEWALK, CURB & GUTTER REMOVAL AND REPLACEMENT PROJECT

NOTICE IS HEREBY GIVEN, pursuant to Section 3093 of the Civil Code of the State of California, that the Director of Public Works of the City of Morgan Hill, California, on the 6th day of April, 2005, did file with the City Clerk of said City, the contract for performing work which was heretofore awarded to QLM, Inc. on November 14, 2004, in accordance with the plans and specifications for said work filed with the City Clerk and approved by the City Council of said City.

That said improvements were substantially completed on March 4, 2005, accepted by the City Council on April 6, 2005, and that the name of the surety on the contractor's bond for labor and materials on said project is North American Specialty Insurance Company.

That said improvements consisted of the construction and installation of all items of work provided to be done in said contract, all as more particularly described in the plans and specifications therefor approved by the City Council of said City.

Name and address of Owner: City of Morgan Hill
17555 Peak Avenue
Morgan Hill, California

Dated: _____, 2005.

Jim Ashcraft, Director of Public Works

I certify under penalty of perjury that the foregoing is true and correct.

Irma Torrez, City Clerk
City of Morgan Hill, CA
Date:



CITY COUNCIL STAFF REPORT
MEETING DATE: APRIL 6, 2005

**FINAL MAP APPROVAL FOR COYOTE ESTATES PH. X
(TRACT 9680)**

RECOMMENDED ACTION(S):

- 1) Approve the final map, subdivision agreement and improvement plans
- 2) Authorize the City Manager to sign the Subdivision Improvement Agreement on behalf of the City
- 3) Authorize the recordation of the map and the Subdivision Improvement Agreement following recordation of the Development Improvement Agreement

EXECUTIVE SUMMARY:

Tract 9680 is a 19 lot subdivision located on the north side of Cochrane Road within the Coyote Estates development (see attached location map). The developer has completed all the conditions specified by the Planning Commission in the approval of the Tentative Map on May 25, 2004.

The developer has furnished the City with the necessary documents to complete the processing of the Final Map and has made provisions with a Title Company to provide the City with the required fees, insurance and bonds prior to recordation of the Final Map.

FISCAL IMPACT:

Development review for this project is from development processing fees.

Agenda Item # 8

Prepared By:

Senior Civil Engineer

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT
MEETING DATE: APRIL 6, 2005

FINAL MAP ACCEPTANCE FOR MORGAN LANE PH. IV
(TRACT 9601)

RECOMMENDED ACTION(S):

- 1) Approve the final map, subdivision agreement and improvement plans
- 2) Authorize the City Manager to sign the Subdivision Improvement Agreement on behalf of the City
- 3) Authorize the recordation of the map and the Subdivision Improvement Agreement following recordation of the Development Improvement Agreement

EXECUTIVE SUMMARY:

Tract 9601 is a 26 lot subdivision on located on the south side of East Central Avenue between Grand Prix Way and Serene Drive (see attached location map). The developer has completed all the conditions specified by the Planning Commission in the approval of the Tentative Map on February 24, 2004.

The developer has furnished the City with the necessary documents to complete the processing of the Final Map and has made provision with a Title Company to provide the City with the required fees, insurance and bonds prior to recordation of the Final Map.

FISCAL IMPACT:

Development review for this project is from development processing fees.

Agenda Item # 9

Prepared By:

Senior Civil Engineer

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: APRIL 6, 2005

APPROVAL OF SUPPLEMENTAL IMPROVEMENT AGREEMENT WITH SOUTH VALLEY DEVELOPERS

RECOMMENDED ACTION(S):

1. Approve the attached Supplemental Improvement Agreement with South Valley Developers, Inc.
2. Authorize the City Manager to sign the Supplemental Improvement Agreement for Construction of Lift Station G, subject to approval by the City Attorney.

EXECUTIVE SUMMARY:

On September 15, 2004, City Council approved an Improvement Agreement for 18585 Monterey Road, Gateway Center with South Valley Developers, Inc. Off-site improvements include paving, curb, gutter and sidewalk, street lights, signing and striping. As a condition of development, the Developer was required to make a connection to the City's existing sewer system. The increased flow from this new development necessitated the construction of Lift Station G sooner than planned. The Developer has agreed to dedicate the public right of way and to construct the new lift station per the City's Sewer Master Plan. Having the Developer complete the lift station would minimize construction conflicts for the development. In addition, the new lift station will provide relief to Lift Station H, as it is near capacity and in operation more than any other lift station.

The construction of Lift Station G is estimated to cost \$664,638, which includes: 1,250 linear feet of force main, 300 linear feet of gravity main, boring and jacking under Monterey Road and UPRR railroad tracks, 10' diameter wet well, pumps, electrical control systems, telemetry, emergency backup generator, and all other appurtenances to complete the project. Developer reimbursable costs include UPRR permit, insurance, bonds, construction surveying, compaction testing and supervision at a total of \$73,646.

Staff recommends that City Council approve the Supplemental Improvement Agreement and authorize the City Manager to sign on behalf of the City.

FISCAL IMPACT:

The total cost of construction and other reimbursable items stated above for Lift Station G is \$738,284. This work is currently budgeted under CIP Fiscal Year 2004-2005, project number #304093 (Sewer Lift Station Improvements) with funding from Sewer Capital Expenditure Fund-AB1600 (641).

Agenda Item # 10

Prepared By:

Associate Engineer

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: *April 6, 2005*

AGREEMENT WITH PG&E FOR DEPOT STREET UTILITIES UNDERGROUNDING PROJECT

RECOMMENDED ACTION(S): Authorize the City Manager to execute an agreement, subject to approval by the City Attorney, with PG&E in the amount of \$47,500 to perform initial engineering design work for the Depot Street Utilities Undergrounding Project.

EXECUTIVE SUMMARY: As directed by Council on February 16, 2005, staff is moving forward with the undergrounding of existing overhead utilities along Depot Street from Main Avenue to 5th Street. On March 8, 2005, staff held a field meeting with a PG&E representative to discuss preliminary design, scheduling and cost for the project.

Staff has received an agreement from PG&E that, if executed, would pay them \$47,500 (see attached) as a deposit to begin the initial engineering design services to convert all overhead utilities lines to underground on Depot Street from Main Avenue to 5th Street, approximately 1900 LF. Time is of the essence with regard to completing the undergrounding work since it must be completed prior to the upcoming Depot Street Grant Project. By executing this initial agreement and paying the deposit amount, PG&E will begin initial design work immediately. Once the initial design work is completed, it is recommended that PG&E become the design and construction agent for the entire undergrounding project. Staff will bring to the Council follow-on agreements with PG&E in the future to complete the project. The entire design process will take from six to nine months to complete.

Staff recommends completion of this project with the use of the City's underground in-lieu fund balance. The estimated construction cost to place existing overhead lines underground from Main Street to 5th Street is \$700,000. Construction work placing the overhead utilities underground will be completed prior to the start of the Depot Street grant project in 2006.

FISCAL IMPACT: The \$47,500 to be paid to PG&E is currently budgeted under CIP Fiscal Year 2004/05, Project No. 529001 - Underground Utilities - Misc. Locations. The funding source is the Underground-in-lieu fund (350).

Agenda Item #11

Prepared By:

Assistant Engineer

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: APRIL 6, 2005

REIMBURSEMENT FOR UNDERGROUNDING OF OVERHEAD UTILITIES AND STORM DRAIN PIPE REPLACEMENT BY T.K. & PARMINDER SINGH

RECOMMENDED ACTION: Authorize reimbursement of \$58,144 for undergrounding of overhead utilities and storm drain pipe replacement by T.K. & Parminder Singh

Agenda Item # 12

Prepared By:

Senior Civil Engineer

Approved By:

Public Works Director

Submitted By:

City Manager

EXECUTIVE SUMMARY: T.K. & Parminder Singh are the developers of a 4 lot subdivision located at the northeast corner of the Hale Avenue and Llagas Road intersection (see attached location map). As part of the project, the developers were required to underground the overhead utilities across the project frontage. An additional 134 lineal feet of overhead utility lines east of the project boundary on Llagas Road was undergrounded as part of this work. The extra work was done to eliminate the final span of overhead utilities along this section of Llagas Road. Additionally, the developers replaced a sub-standard section of city storm drain pipe under Hale Avenue. This work was not the responsibility of the project but was done in order to correct a flooding problem in the area. All work associated with both activities has been completed to the satisfaction of the City.

The developers are requesting reimbursement for the undergrounding work as well as for the replacement of the storm drain pipe. The cost for the undergrounding work beyond the responsibility of the developers is \$35,526 and will be funded from the Underground Utility fund (350). The cost of the storm drain work is \$22,618 and will be funded from the Regional Drain non-AB1600 fund (304).

Staff recommends that the City approve the developer's reimbursement request since this work was outside of the boundaries of their subdivision.

FISCAL IMPACT: The total cost of the reimbursable work is \$58,144 and will be funded by the FY 2004/05 Capital Improvement Program budget. Specifically, \$35,526 will be funded from (CIP) budget Project Number 529001 (350-46360-8057) and \$22,618 will be funded from (CIP) budget Project Number 425097 (304-86360-8086). No additional funding is required.



CITY COUNCIL STAFF REPORT

MEETING DATE: April 6, 2005

AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF SHUTE, MIHALY, & WEINBERGER, LLP

RECOMMENDED ACTIONS:

Authorize the City Manager to execute an Amendment to Agreement with the law firm of Shute, Mihaly, & Weinberger, LLP.

EXECUTIVE SUMMARY:

On September 8, 2004, the City entered into a contract with the law firm of Shute, Mihaly, & Weinberger, LLP, to defend the City in an action filed by Arcadia Development Company. The contract amount of \$20,000 covered fees and costs to and including the hearing on the City's demurrer. The demurrer was denied by the court. The current contract amount has been expended. It is anticipated that an additional \$45,000 will be sufficient to cover the fees and costs associated with the continuing defense of this lawsuit to and including the hearing on the writ of mandate. Staff recommends that Council approve the attached Amendment to Agreement in the amount of \$65,000.

FISCAL IMPACT:

The cost of this amendment to agreement can be accommodated in the City Attorney's Office budget. No additional appropriation is necessary at this time.

Agenda Item # 13

Prepared By:

(Title)

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: April 6, 2005

Agenda Item # 14

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1716, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1616 NEW SERIES TO GRANT ONE ADDITIONAL YEAR FOR THE CONSTRUCTION OF A 3,253 SQUARE FOOT DRIVE-THRU FAST FOOD RESTAURANT AND A SIT DOWN RESTAURANT 5,000 TO 6,500 SQUARE FEET IN SIZE AT THE NORTHWEST QUADRANT OF COCHRANE ROAD AND HIGHWAY 101 (APNs 726-33-023 & - 024) (ZAA-02-18: COCHRANE – IN-N-OUT BURGER)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1716, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On March 16, 2005, the City Council Introduced Ordinance No. 1716, New Series, by the Following Roll Call Vote: AYES: Carr, Kennedy, Sellers; NOES: Grzan; ABSTAIN: None; ABSENT: Tate.

FISCAL IMPACT:

No budget adjustment required.

ORDINANCE NO. 1716, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1616 NEW SERIES TO GRANT ONE ADDITIONAL YEAR FOR THE CONSTRUCTION OF A 3,253 SQUARE FOOT DRIVE-THRU FAST FOOD RESTAURANT AND A SIT DOWN RESTAURANT 5,000 TO 6,500 SQUARE FEET IN SIZE AT THE NORTHWEST QUADRANT OF COCHRANE ROAD AND HIGHWAY 101 (APNs 726-33-023 & -024) (ZAA-02-18: COCHRANE – IN-N-OUT BURGER)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

- SECTION 1.** The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.
- SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.
- SECTION 3.** An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A mitigated Negative Declaration was filed with the original zoning amendment application.
- SECTION 4.** The City Council hereby approves an amendment to Ordinance No. 1616 N.S. to grant a one-year extension of time for the construction of a 3,253-sf drive-thru fast food restaurant and a sit down restaurant 5,000 to 6,500 sf in size, thereby extending the zoning approval from May 7, 2005 to May 7, 2006.
- SECTION 5.** With the exception of the one year extension of time granted under this Ordinance, all other provisions of Ordinance No. 1616 N.S. shall remain valid and in full effect.
- SECTION 6.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.
- SECTION 7.** Effective Date; Publication. This Ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 16th Day of March 2005, and was finally adopted at a regular meeting of said Council on the Day of April 2005, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1716, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of April 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:_____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: April 6, 2005

Agenda Item # 15

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1717, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH A PRECISE DEVELOPMENT PLAN FOR A 17 UNIT SINGLE FAMILY PROJECT LOCATED BETWEEN AND ADJACENT TO PEAR DRIVE AND JEAN COURT ALONG THE WEST SIDE OF HILL ROAD. (APN 728-07-47, 728-07-48, 728-07-49, 728-07-50, 728-07-51, 728-08-014, 728-08-015) (ZA-04-15: HILL – GERA)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1717, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On March 16, 2005, the City Council Introduced Ordinance No. 1717, New Series, by the Following Roll Call Vote: AYES: Carr, Grzan, Kennedy, Sellers; NOES: None; ABSTAIN: None; ABSENT: Tate.

FISCAL IMPACT:

None. Filing fees were paid to cover the cost of processing these applications.

ORDINANCE NO. 1717, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH A PRECISE DEVELOPMENT PLAN FOR A 17 UNIT SINGLE FAMILY PROJECT LOCATED BETWEEN AND ADJACENT TO PEAR DRIVE AND JEAN COURT ALONG THE WEST SIDE OF HILL ROAD. (APN 728-07-47, 728-07-48, 728-07-49, 728-07-50, 728-07-51, 728-08-014, 728-08-015) (ZA-04-15: HILL – GERA)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

- SECTION 1.** The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.
- SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.
- SECTION 3.** An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A mitigated Negative Declaration will be filed.
- SECTION 4.** The City Council finds that the proposed RPD Overlay District is consistent with the criteria specified in Chapter 18.18 of the Morgan Hill Municipal Code.
- SECTION 5.** The City Council hereby approves a precise development plan as contained in that certain series of documents dated January, 2005 on file in the Community Development Department, entitled "Lands of Gera: Site Development Plan / Vesting Tentative Map" prepared by M.H. Engineering. These documents show the exact location and sizes of all lots in this development and the location and dimensions of all proposed buildings, vehicle and pedestrian circulation ways, recreational amenities, parking areas, landscape areas and any other purposeful uses on the project.
- SECTION 6.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.
- SECTION 7.** Effective Date Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

SECTION 8. The approved project shall be subject to the following conditions:

1. Homes on Lots 1 through 9, 11, 12, 15, and 17, as shown on the site development plan shall be limited to single-story dwellings.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 16th Day of March 2005, and was finally adopted at a regular meeting of said Council on the Day of April 2005, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

⌘ CERTIFICATE OF THE CITY CLERK ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1717, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of April 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: April 6, 2005

Agenda Item # 16

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1718, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-17: HILL - GERA (APN 728-07-47, 728-07-48, 728-07-49, 728-07-50, 728-07-51, 728-08-014, 728-08-015) (DA-04-04: HILL - GERA)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1718, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On March 16, 2005, the City Council Introduced Ordinance No. 1718, New Series, by the Following Roll Call Vote: AYES: Carr, Grzan, Kennedy, Sellers; NOES: None; ABSTAIN: None; ABSENT: Tate.

FISCAL IMPACT:

None. Filing fees were paid to cover the cost of processing these applications.

ORDINANCE NO. 1718, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-17: HILL - GERA (APN 728-07-47, 728-07-48, 728-07-49, 728-07-50, 728-07-51, 728-08-014, 728-08-015) (DA-04-04: HILL - GERA)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution No. 04-35, adopted March 24, 2004, has awarded allotments to a certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP-02-17: Hill – Gera	6 allotments for Fiscal Year 2004-05
	3 allotments for Fiscal Year 2005-06

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill.

These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the development proposal and agreement approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 6. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 16th Day of March 2005, and was finally adopted at a regular meeting of said Council on the Day of April 2005, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

⌘ CERTIFICATE OF THE CITY CLERK ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1718, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of April 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – MARCH 16, 2005**

CALL TO ORDER

Mayor/Chairman Kennedy called the special meeting to order at 6:00 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Grzan, and Mayor/Chairman Kennedy
Remote Location: Council/Agency Member Tate (6825 E. 4th Street, Scottsdale, AZ for Closed Only)
Late: Council/Agency Member Sellers (arrived at 6:03 p.m.)

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

Mayor/Chairman Kennedy announced the below listed closed session items:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority: Government Code Sections 54956.9(b) & (c)
Number of Potential Cases: 4

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

Mayor Pro Tempore/Vice-chairman Tate opened the Closes Session items to public comment in Arizona. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:03 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 7:03 p.m.

CLOSED SESSION ANNOUNCEMENT

Acting City Attorney/Agency Counsel Siegel announced that under anticipated litigation pursuant to Government Code Section 59495 b & c, one of the anticipated litigations, the Council created a subcommittee consisting of Mayor Kennedy and Mayor Pro Tempore Tate.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

Mayor/Chairman Kennedy led the Pledge of Allegiance.

PROCLAMATIONS

Mayor Kennedy presented Red Cross Disaster Services Volunteer Pat Moore with a proclamation, declaring March as Red Cross Month. Mr. Moore stated that the Red Cross is grateful and depends upon the generous contribution of the citizens of Morgan Hill and Santa Clara County to help them prepare and respond to local emergencies.

CITY COUNCIL REPORT

Council Member Sellers indicated that the Council reorganized its subcommittee structure. He stated that he chairs the Community & Economic Development Committee and serves with Council Member Carr, pursuing a number of projects. He felt that the reorganization of the committees will help the Council become more efficient. He said that this is an exciting time for the downtown as new development is occurring. He also serves on the Regional Planning and Transportation Committee along with Mayor Kennedy. He stated that he attended a Valley Transportation Authority (VTA) Policy Advisory Committee meeting last week. He said that this Advisory Committee advises the VTA Board on policy issues. He said that there have been a few significant issues raised. He noted that there is an item on this evening's agenda relating to a significant policy being proposed by VTA to provide additional funding for transportation. He stated that he is looking forward toward serving on both committees. He indicated that a groundbreaking ceremony was held this morning for the Viale housing project. He stated that this is a residential project that is targeted for teachers. This project will assist teachers reside in this community. He acknowledged the efforts of Council Member Carr who pushed this project forward; making this project possible.

Mayor Kennedy reported on the Regional and Planning Transportation Committee, indicating that the Committee met on March 11. He stated that there were a few issues discussed that are of interest to the City: 1) The Santa Clara County Local Agency Formation Commission (LAFCo) has recently provided a map of suggested areas for annexation within the City of Morgan Hill's sphere of influence. He indicated that there are approximately 10+ pockets of unincorporated lands throughout the City that LAFCo recommends be incorporated into the City. He stated that the Committee discussed these pockets of lands and that they would be providing a recommendation to the entire Council on this issue. 2) He said that there is another major issue that is coming up with respect to VTA; the Long Term

Transit Capital Investment Program. He said that approximately \$8-10 billion for various projects are at stake. He indicated that the deadline to get this information to the VTA Board of Directors is April 22. It was suggested that the Council receive a presentation from VTA staff and recommended that the Council agendaize the discussion of the Long Term Transit Capital Investment Program as soon as possible so that the Council can provide its input and recommendations to the VTA Board of Directors on matters relating to transit, transportation, highway, freeways, buses, Caltrain, etc. 3) Also, discussed were federal and state legislative programs, Valley Transportation Plan 2030, and the development of Coyote Valley. He indicated that he received information yesterday that the City of San Jose has agreed to come to Morgan Hill and make a presentation to the Council and South County Stakeholders. If this information is correct, he felt that this would be a step in the right direction. He said that he will be meeting with San Jose staff to make sure that the City of Morgan Hill's issues are addressed.

CITY MANAGER REPORT

City Manager Tewes informed the Council that the City will be opening bids next week for the construction of the indoor recreation center. It is staff's belief that 3-4 strong bidders will result in competitive bids. Staff plans to return to the Council with a recommendation at its first meeting in April on how to proceed. He indicated that only one proposal was received in response to the City's request for proposal for a public-private partnership for the outdoor sports complex. He informed the Council that staff will present the Council with a report next week on the process and the schedule for reviewing the outdoor sports complex proposal. He noted that the Mayor has expressed an interest on the VTA's Transit Investment Plan, indicating that the discussion of this item will be agendaized for the Council's March 23, 2005 meeting.

CITY ATTORNEY REPORT

Acting City Attorney Siegel stated that he did not have a report to present this evening.

OTHER REPORTS

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Leonard Cretcher indicated that his remarks this evening were aimed toward helping City management and staff to resolve any and all future disputes over the aquatics center pool space allocation. He felt the Council needs to discuss a number of issues in order to provide the Parks & Recreation staff with a strong framework for future policy development in order to correct some of the policies currently in place. He requested that the Council review mandates of the aquatics center: a) do not operate at a loss; b) groups renting space from the center must contain a large percentage of residents from Morgan Hill (requested that this policy be reconsidered); and c) look at programs being offered to determine whether they compete and/or take away from the full potential for the aquatics center. As far as the solution so far presented, he laid out a list for Council review (handout to the Council). He felt that with a stronger

policy framework, the aquatics center can still provide for the proper mandates while providing an aquatics space rental policy that is fair and equitable to all.

No further comments were offered.

City Council Action

CONSENT CALENDAR:

Council Member Sellers requested that item 7 and 12 be removed from the Consent Calendar.

Action: *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Mayor Pro Tempore Tate absent, **Approved** Consent Calendar Items 1-6, 8-11, 13 and 14, as follows:*

1. **PURCHASE OF POLICE DEPARTMENT VEHICLES**

Action: *1) **Authorized** Vehicle Purchases and Police Equipment Build Outs Through The Ford Store Morgan Hill for Vehicles Identified in This Report for a Total Cost of \$168,400; and 2) **Declared** Vehicles #P91502, #P96230, #P95201, and #P96302 as Surplus, and **Authorized** Sale at Auction.*

2. **APPROVAL OF CONSULTANT AGREEMENT AMENDMENT WITH HARRIS & ASSOCIATES FOR 2003-2004 PAVEMENT RESURFACING PROJECT**

Action: ***Approved** Consultant Agreement Amendment in the Amount of \$10,500 with Harris and Associates for Providing Additional Construction Inspection Services for the 2003-2004 Pavement Resurfacing Project; Subject to Review and Approval by the City Attorney.*

3. **FINAL MAP APPROVAL FOR MISSION RANCH PHASE VIII (TRACT 9657)**

Action: *1) **Approved** the Final Map, Subdivision Agreement, and Improvement Plans; 2) **Authorized** the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; and 3) **Authorized** the Recordation of the Map and the Subdivision Improvement Agreement Following Recordation of the Development Improvement Agreement.*

4. **UTILITIES AND ENVIRONMENT SUBCOMMITTEE MINUTES OF FEBRUARY 28, 2005**

Action: *1) **Reviewed** and **Accepted** Minutes.*

5. **ACCEPTANCE OF PUBLIC IMPROVEMENTS FOR GATEWAY CENTER PHASE I**

Action: *1) **Adopted** Resolution No. 5894, Accepting the Public Improvements for Gateway Center Phase I; and 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.*

6. **ACCEPTANCE OF EDMUNDSON WATER MAIN DISTRIBUTION, PHASE I PROJECT**
*Action: 1) **Accepted** as Complete the Edmundson Water Main Distribution, Phase I Project in the Final Amount of \$382,553; and 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.*
8. **AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF HATCH & PARENT**
*Action: 1) **Authorized** the Appropriation of \$100,000 from the Unappropriated Water Fund Balance into Account 650-42230-5710 to Fund the Continuing Legal Services of Hatch & Parent; and 2) **Authorized** the City Manager to Execute an Amendment to Agreement with the Law Firm of Hatch & Parent; Subject to Review and Approval by the City Attorney.*
9. **THIRD AMENDMENT TO AGREEMENT WITH THE STROMBOTNE LAW FIRM**
*Action: **Authorized** the City Manager to Execute a Third Amendment to Agreement with the Strombotne Law Firm.*
10. **CONTINUATION OF ORDINANCE NO. 1714, NEW SERIES**
*Action: **Continued the Adoption** of Ordinance No. 1714, New Series, to April 6, 2005. Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING TEXT AMENDMENTS TO CHAPTER 6.36 (ANIMALS AND LAND USE) OF TITLE 6 (ANIMALS) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL. (ZA-04-22: CITY OF MORGAN HILL-ACREAGE REQUIRED FOR ANIMALS).***
11. **ADOPT ORDINANCE NO. 1715, NEW SERIES**
*Action: **Waived** the Reading, and **Adopted** Ordinance No. 1715, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING TEXT AMENDMENTS TO CHAPTER 18.56 (EXCEPTION AND MODIFICATIONS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL. (ZA-04-24: CITY OF MORGAN HILL-FENCE HEIGHT AMENDMENT).***
7. **MORGAN HILL LIBRARY SCHEDULE AND ARCHITECT'S FEE AMENDMENT**

Council Member Sellers noted that the report addresses the need for a 10% increase due to an increase in the scope of work, delayed time, etc. In thinking back to the allocation for the Library funding, he felt that the Council allocated a significant/high amount of funding to cover a variety of possibilities in terms of the Library. He inquired whether the City was within a reasonable framework with regard to funding or will there be a need to give further consideration to added costs.

Jim Dumas indicated that a contingency is included in the soft costs and that it is substantially more than what is before the Council. He felt that the costs are well within this range.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Mayor Pro Tempore Tate absent: 1) **Accepted** Schedule; and 2) **Authorized** the City Manager to Prepare and Execute an amendment to the Contract with Noll and Tam in the Amount of \$210,200, Subject to Review and Approval by the City Attorney.*

12. ACCEPTANCE OF DONATIONS FOR THE AQUATICS CENTER FROM MORGAN HILL AQUATIC CENTER, INC. (Continued from 2/16/05)

Council Member Sellers said that the last time there was discussion about donations, there were several issues regarding the Aquatics Center Inc.'s status as a 501c3 and to the degree that they have incorporated in terms of meeting on a regular basis, etc. He did not read in the staff report that the Aquatics Center Inc. has made any changes in terms of their operations or their organizational structure (e.g., how often they meet, have they enlarged their board, etc.).

Recreation and Community Services Manager Spier said that staff has not pursued whether the Aquatics Center Inc. is complying with the 501c3 regulations and how the Foundation is operating. Staff has separated the issue into three components with the first component being to clarify the donated items from the Aquatics Foundation. However, staff will further pursue the 501c3 status. She said that the Parks & Recreation Commission has commenced the review and process relating to the lane assignments. She informed the Council that she would report back on the operations of the Foundation at a future meeting.

Council Member Sellers said that he was anxious about moving forward with an action on this item until such time that there is additional interaction with the Council and the Foundation. He felt that there is an implied liability if the City is interacting with an organization that is not undertaking normal operating practices for non profits. He said that recent laws have increased liabilities and responsibilities for non profits. He said that he would reluctantly approve the action this evening. However, before moving forward, he requested that the City makes sure that the Aquatics Foundation comes before the Council and that their operating procedures are clear.

Council Member Grzan concurred with the comments as expressed by Council Member Sellers and that it was his hope that the Foundation hears the Council's concerns. Further, that the Aquatics Foundation would approach the Council with regards to the operation of their business affairs soon.

Action: *On a motion by Council Member Carr and seconded by Mayor Kennedy, the City Council, on a 4-0 vote with Mayor Pro Tempore Tate absent, **Accepted** Donations by the Morgan Hill Aquatics Center, Inc. to the Aquatics Center.*

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Council/Agency Member Carr and seconded by Council/Agency Member Sellers, the City Council/Agency Board, on a 4-0 vote with Mayor Pro Tempore/Vice-chair Tate absent, **Approved** Consent Calendar Items 13 and 14 as follows:*

13. JOINT REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING MINUTES OF FEBRUARY 23, 2005

Action: ***Approved** the Minutes as written.*

14. JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF MARCH 2, 2005

Action: ***Approved** the Minutes as written.*

City Council Action (Continued)

CONSENT CALENDAR:

Mayor Kennedy requested that item 15 be pulled from the Consent Calendar as he has a conflict.

15. ACCEPTANCE OF PAVEMENT RESURFACING PROJECT FOR 2003-2004

Mayor Kennedy indicated that Council Member Grzan is next in line to serve as Mayor Pro Tempore and appointed him as acting Mayor Pro Tempore before stepping down from the Dias.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 3-0 vote with Mayor Kennedy and Mayor Pro Tempore Tate absent: 1) **Appropriated** an Additional \$16,688 in Unappropriated Measure C Capital Improvement Project (CIP) Funds which Accrue to the Public Facility/Non-AB1600 (346) Fund for this Project; 2) **Accepted** as Complete the 2003-2004 Street Resurfacing Project in the Final Amount of \$671,378.39, Including Approval of Change Orders 4, 5, 8, and 9; and 3) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.*

Mayor Kennedy resumed his seat on the Dias.

City Council Action

PUBLIC HEARINGS:

16. ZONING AMENDMENT, ZAA-02-18: COCHRANE-IN-N-OUT BURGER – *Ordinance No. 1716, New Series*

Director of Community Development Molloy-Previsich presented the staff report, indicating that the recommended action before the Council would provide a one year extension of time for the construction

of restaurants in the Tharoldson Planned Unit Development. She informed the Council that the In and Out Burgers organization has secured an agreement with Denny's Corporation who is currently going through the City's development review process. However, the In and Out Burgers organization will not be able to meet the zoning approval deadline of May 2005. Therefore, they are requesting a zoning amendment to allow them an additional year to construct their restaurant. However, the sit down restaurant will still need to be under construction within this coming year prior to issuing a building permit for the In and Out Burgers Restaurant.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Council Member Sellers said that the public is anxious to have In and Out Burgers move forward. He said that there continues to be an interest, on the part of the Council, in meeting the goal of having a quality sit down restaurant in Morgan Hill as well as attract In and Out Burgers as quickly as possible. Unfortunately, it has taken longer than anyone had hoped for. He said that the Economic Development Committee has reiterated this feeling and expressed an interest in working with the applicant. He noted that the applicant for In and Out Burgers was in attendance this evening.

Council Member Carr inquired as to the requested one year extension.

Ron Volle, Real Estate Manager for In and Out Burgers, stated that he is requesting a year extension. However, he does not believe that this much time would be needed. He stated that In and Out Burgers is close to meeting the May 2005 deadline. He informed the Council that Denny's Restaurant will be going through design review tomorrow night and that it was his belief that it will receive architectural and site review approval. In and Out Burgers has its building plans ready to submit for approval and that Denney's is working on their building plans, awaiting the final approval of the exterior architecture of their building. Once the plans approved by the City, both restaurants will commence construction. It is his hope that they would be able to commence construction in May, June or July 2005.

Council Member Grzan stated that he would not be supporting the extension. He indicated that he has served on the General Plan Task Force and served with Planning Commissioner Charles Weston who opposes the request for a one year extension for the same reason he will be opposing the extension. He noted that this is a gateway into the City and that it was the intent of the members of the General Plan Task Force that gateways not be built in a fashion similar to other gateways or interchanges along Highway 101. It was his belief that it was the intent of the General Plan Task Force not to have this type of business in the City's gateways. He expressed concern that the City will be seeing other incursions; changing the community he envisioned to becoming a city similar to other cities along Highway 101 where you can not distinguish the differences between them.

Council Member Sellers stated that he appreciated Council Member Grzan's comments and concerns. He noted that this project will go through a significant site review process in order to make sure that the design and architectural elements are appropriate for Morgan Hill. It was his hope that the Council will come close to meeting Council Member Grzan's concerns through the design process.

Mayor Kennedy said that he welcomes In and Out Burgers to Morgan Hill as many residents have expressed a desire to have them in the community. He stated that he understands the issues relating to the gateway and felt that the City needs to do its best to provide well designed, aesthetically pleasing gateways to the community. However, there is also a need to bring in restaurants and facilities that are popular with the community in terms of economic development and to help with revenues. It was his hope that the Council would support the request.

Action: *On a motion by Council Member Sellers and seconded by Mayor Kennedy, the City Council, on a 3-1 vote with Council Member Grzan voting no and Mayor Pro Tempore Tate absent, **Waived** the Reading in full of Ordinance No. 1716, New Series, the Zoning Amendment Ordinance.*

Council Member Carr said that those watching this three year process know that the Council has struggled with this project as well. He stated that he shares the gateway concerns. He felt that the Council came to the best mitigations available in asking In and Out Burgers to bring in a partner in order to build in the gateway. He noted that In and Out Burgers has done this. He understands, in reading the materials, that this has not been an easy process and that he was not satisfied with the results of the process. He felt that the partnership to be created may be more damaging to the gateway and that it was his hope that there will be an opportunity to have a discussion about this concern. He noted that the action before the Council is to follow up with a commitment made to In and Out Burgers two years ago and provide a little more time to this restaurant. He stated that he would support the one year extension as the Council would be keeping its word, given two years ago, in requesting that In and Out Burgers to do some things, noting that they have. Therefore, he was compelled to support the extension.

Council Member recommended that the Council look at the appropriateness of businesses and that they conform to the City's planning, zoning and other criteria. He understands that there are significant pressures on the City to look at revenues and revenue sources. However, he expressed concern that the pressure for revenues may compromise the community; resulting in the loss of the City's rural character and the things that make Morgan Hill special.

Council Member Sellers said that there may be areas where Council Member Grzan's concerns may have some validity and that the Council needs to be cautious about uses in other intersections. He stated that revenue generation played no part on his decision as it is relatively minor in this case.

Council Member Carr said that his decision on the use has never been based on revenue interest as he did not believe that a fast food restaurant will generate much revenue for the City. However, the issue is about services for citizens and the needed services that he keeps hearing from families in Morgan Hill for sit down restaurants and for the support he has heard and felt in the community for In and Out Burgers.

Action: *On a motion by Council Member Sellers and seconded by Mayor Kennedy, the City Council **Introduced** Ordinance 1716, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL***

APPROVING AN AMENDMENT TO ORDINANCE NO. 1616, NEW SERIES, TO GRANT ONE ADDITIONAL YEAR FOR THE CONSTRUCTION OF A 3,253 SQUARE FOOT DRIVE-THRU FAST FOOD RESTAURANT AND A SIT DOWN RESTAURANT 5,000 TO 6,500 SQUARE FEET IN SIZE AT THE NORTHWEST QUADRANT OF COCHRANE ROAD AND HIGHWAY 101 (APNs 726-33-023 & - 024) (ZAA-02-18: COCHRANE – IN-N-OUT BURGER), by the following roll call vote: AYES: Carr, Kennedy, Sellers; NOES: Grzan; ABSTAIN: None; ABSENT: Tate.

17. ZONING AMENDMENT, ZA-04-15/DEVELOPMENT AGREEMENT, DA-04-13: HILL-GERA – Ordinance Nos. 1717 & 1718, New Series

Director of Community Development Molloy-Previsich presented the staff report, indicating that this is a request for the approval of a precise development plan for a nine-lot subdivision and future subdivision/development on four existing lots located to the north of Jean Court.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Mayor Pro Tempore Tate absent, **Approved** the Mitigated Negative Declaration.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Mayor Pro Tempore Tate absent, **Waived** the Reading in full of Ordinance No. 1717, New Series, the Zoning Amendment Ordinance.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1717, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH A PRECISE DEVELOPMENT PLAN FOR A 17 UNIT SINGLE FAMILY PROJECT LOCATED BETWEEN AND ADJACENT TO PEAR DRIVE AND JEAN COURT ALONG THE WEST SIDE OF HILL ROAD. (APN 728-07-47, 728-07-48, 728-07-49, 728-07-50, 728-07-51, 728-08-014, 728-08-015) (ZA-04-15: HILL – GERA), by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers; NOES: None; ABSTAIN: None; ABSENT: Tate.***

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Waived** the Reading in full of Ordinance No. 1718, New Series, the Development Agreement Ordinance.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1718, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-17:***

HILL - GERA (APN 728-07-47, 728-07-48, 728-07-49, 728-07-50, 728-07-51, 728-08-014, 728-08-015) (DA-04-04: HILL - GERA), by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers; NOES: None; ABSTAIN: None; ABSENT: Tate.

18. ZONING AMENDMENT, ZA-05-02: TEXT AMENDMENT – MONUMENT SIGNS/FORD MOTOR COMPANY – Ordinance No. 1719, New Series

Director of Community Development Molloy-Previsich presented the staff report, indicating that the zoning ordinance amendment would increase the maximum allowable sign area for on site freestanding monument signs in commercial and industrial zoning districts in a PUD on lots of five acres or more. She stated that the zoning amendment would increase the allowable sign size from 48 square feet to 50 square feet. She informed the Council that the Fords' standard monument sign is 1.54 square feet too large and did not fit within the City's ordinance. She noted that there is no mechanism in place for staff or the Site and Architectural Review Board to approve the sign. She stated that a custom sign for the Ford dealership would exceed \$100,000 while their standard sign costs approximately \$17,000.

Council Member Carr noted that there was discussion about a variance request in the Planning Commission minutes attached to the staff report. He inquired whether there was a way for the City to create a means for a business to request a variance or a special use permit rather than changing the sign ordinance. He did not understand the explanation given to the Planning Commission when they asked about the provision for a variance request and why it was felt that it was not a good idea.

Ms. Molloy-Previsich stated that any time you consider a variance, you need to compare it to similar situated properties and that there should be special circumstances associated with the property itself. If the City was going to approve a variance for one situation, it may lead to other variances for other similar situations. If it is felt that a 50 square foot size is a reasonable standard as opposed to the existing 48 square feet standard. The Council could make the 50 square foot maximum size the standard for larger sized lots rather than placing the applicant, Planning Commission and/or the Council in a position of having to find special circumstances/hardships.

City Manager Tewes informed the Council that the City has not had good experiences with variances because there are 7-8 findings that must be made in order to grant a variance. He said that typically, the findings to grant a variance are hard to make. Should the Council believe that the 50 square foot signage is an appropriate size for larger lots, the Council could move forward with the amendment rather than a variance process as it is difficult to meet.

Council Member Sellers noted that the Ford's Store has a 50 square foot standard sized sign. He inquired whether the 50 square foot maximum is a fairly standard size in other communities for projects of this nature.

Ms. Molloy Previsich said that it has been her experience that a 50 square foot monument sign for businesses of this nature and size have been approved in other communities.

Council Member Grzan stated that he would prefer and support the approval of a variance as opposed to a general change in the City's policies regarding signage. He recommended that the City hold to higher tolerances or qualities regarding signage. He felt that the size of signage is a concern and that he would support upholding the City's ordinance on signage.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Council Member Sellers felt that the size of signs will be an issue that the City will have to deal with in the future given the fact that Ford's Store representatives states that it is their standard sign. He said that there may be other similar entities that may make similar requests. He noted that the request is only a 4% increase in size and would be negligible to anyone who would see the sign. He stated that he would prefer to deal with the issue at this time. He noted that the City Manager has indicated that there is difficulty in getting variances approved because of the findings that need to be made.

Action: *On a motion by Council Member Sellers and seconded by Mayor Kennedy, the City Council, on a 3-1 vote with Council Member Grzan voting no and Mayor Pro Tempore Tate absent, **Waived** the Reading in full of Ordinance No. 1719, New Series.*

Council Member Carr stated that he was not comfortable moving forward with the ordinance amendment at this time even though it may be the direction the Council takes. He felt that the hurdles for variances need to be high. He appreciates the recommendation by the Planning Commission that the increased signage be approved on larger lots and PUDs. However, he does not know how many parcels this standard would apply to in Morgan Hill. He felt that 50 square feet as opposed to 48 square feet sounds too big of a difference in the size of a sign. He stated that he needs to understand what is being proposed. He did not believe that the City should be changing its ordinance for the value of one business owner in town. Therefore, he would not support the ordinance this evening. He stated that he was not closed to the idea of researching this item and determining further implications of the recommended action as opposed to this one instance.

Mayor Kennedy said that it may be helpful to ask staff to return with additional information about the size of the sign and continue this item to a future meeting (e.g., what is the typical monument sign size standard in other cities).

Action: *Council Sellers rescinded his motion.*

Action: *On a motion by Council Member Sellers and seconded by Mayor Kennedy, the City Council, on a 4-0 vote with Mayor Pro Tempore Tate absent, **continued** the public hearing to April 6, 2005.*

19. WATER CONSERVATION SUBMETERING ORDINANCE – Ordinance No. 1719, New Series

Programs Manager Eulo presented the staff report, indicating that there can be at least a 15% savings in water use in apartment buildings if each unit has a separate water meter. He said that the ordinance has

been drafted to require individual metering in new multi family units. He informed the Council that the City's below market housing consistently seems to have one meter for the building. In speaking with South County Housing staff to advise them of what the City is proposing, they expressed concern that some of their sites are unusual and that there would be constraints that would prevent them from having separate water meters. He indicated that there is a provision in the ordinance that would allow the owner of a development, similar to South County Housing, to have internal sub meters that the property manager would have the responsibility for reading and billing. He stated that it is the intent of the ordinance before the Council to require that all new multi family buildings have separate water meters for each unit.

Mayor Kennedy stated that it was his belief that the City already has an ordinance in place that requires separate water meters for the conversion of apartments to condominiums for each unit.

Mr. Eulo indicated that he could not find evidence that separate water meters would be required for each unit in the City's municipal code. He did not believe that such an ordinance is in place as there have been several below market rate projects that have developed in the last several years that have a common meter.

Acting City Attorney Siegel suggested that the Council continue the public hearing for this item to April 6 if it is in support of the intent of the ordinance. Staff will return with a revised ordinance.

Mayor Kennedy opened the public hearing. No comments were offered.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Mayor Pro Tempore Tate absent, **Continued** the public hearing to April 6, 2005.*

Acting City Attorney Siegel recommended that the City Council provide comments regarding the internal separate metering in order to allow staff to address the comments and return with an ordinance.

City Manager Tewes informed the Council that the City's regulation for the conversion of rental housing to condominiums requires separate meters. He said that the proposed ordinance would apply to all new construction of rental housing and not just apply to conversion of rental housing.

Council Member Sellers indicated that staff identified the cost savings of 15% because residents are more cautious about the water they use and pay for.

City Council Action

OTHER BUSINESS:

20. PROPOSED VEHICLE REGISTRATION SURCHARGE FOR SANTA CLARA COUNTY – Resolution No. 5895

Deputy Director of Public Works Bjarke presented the staff report, indicating that the resolution before the City Council would support proposed Senate Bill 680 that would impose a \$5.00 surcharge on vehicle registration for all registered vehicles in Santa Clara County for an eight year period. The proceeds of this revenue would go toward congestion relief projects with a portion going toward litter removal along freeways and expressways as well as landscape restoration. He informed the Council that the Bill is being promoted by the Silicon Valley Leadership Group and that Laura Stuchinsky was in attendance to answer questions the Council may have. As proposed, the program would raise approximately \$56 million with an approximate 1% administration costs being paid to the Department of Motor Vehicles (DMV). He indicated that \$4 million would go to Caltrain capacity improvements; \$4 million for trash removal and landscape restoration; \$16 million toward the tier 1 County Expressway program; and \$16 million dollars for local improvements. He stated that Morgan Hill would receive approximately \$330,000 as the City's fair share of this source of funding. There is another \$16 million to be used for local street improvements (competitive pot). Cities would have an opportunity to submit projects to VTA for funding that are congested relief related or to improve the operational capacity of the City's road system. It was his belief that Morgan Hill would be competitive for these funding sources. He identified Morgan Hill projects that would be submitted for funding: Cochrane Avenue corridor signal synchronization; City-wide signal synchronization; congestion relief street improvement projects (yet to be identified); matching funds from federal grants for larger projects such as the extension of Butterfield Boulevard to Watsonville Road that involves a grade separation over the railroad tracks, and/or to improve efficiencies to city road systems (yet to be identified). He stated that staff would return to the City Council with more concrete proposals at a later date. He informed the Council that Senator Simitian has requested 100% support from all cities in the County. Once this piece of legislation passes and is signed by the Governor, it would authorize the VTA Board of Directors to implement the program. He indicated that the resolution before the Council this evening is in support of the legislation.

Council Member Grzan inquired as to the number of registered vehicles in Morgan Hill. He further inquired how much revenue can be anticipated to be generated by the community of Morgan Hill

Mr. Bjarke indicated that the Department of Motor Vehicles has not produced a list of registered vehicles by cities.

Ms. Stuchinsky informed the Council that the DMV produced a list of registered vehicles by zip codes and that registered vehicles are not broken down by cities.

Mayor Kennedy stated that at the Cities Association meeting, there was a list provided by population and by City that approximates the amount of vehicle license fees that are paid. From this evaluation, it was determined that Morgan Hill would receive approximately \$330,000 over the life of this program under category 3.

Council Member Grzan inquired how much revenue would the Morgan Hill community put into this project. Should Morgan Hill generate \$2 million and the City only receives \$330,000, he was not sure whether the City would receive a good return.

Mr. Bjarke said that one of the objectives was to create a program that provides regional benefits; noting that there are residents in Morgan Hill that community up through the County expressways and use the freeways. Therefore, it is felt that benefits derive from the passage of this Bill.

Council Member Sellers said that there are approximately 10,000 households in Morgan Hill with each household having three cars. At \$5 per vehicle, it would equate to approximately \$750,000 being collected over the life of the project.

Council Member Grzan noted that commercial vehicles, RVs, and trailers are also registered. He was not sure whether it would be better for the City to charge and receive the monies directly. This would result in the City applying funds to City projects.

City Manager Tewes stated that the State imposes the vehicle registration fee. There is a legislator who is willing to take forward this Bill. It needs to be recognized that there will be a county-wide pot and that a local return to source. He clarified that the City of Morgan Hill cannot impose its own vehicle registration. He said that based on his calculation of 10,000 households times 3 equates to 30,000 vehicles being registered and that approximately \$1.8 million per year could be generated.

Mayor Kennedy said that based on the population for Santa Clara County prorated, Morgan Hill would contribute approximately \$120,000 per year.

Council Member Sellers noted that Morgan Hill has the highest percentage of commuters of any cities in the region who are using other city(ies) and county roads. He felt that the Council needs to rely on public works staff for the competitive funds in order to receive the City's fair share of funding. He acknowledged the efforts of Mr. Bjarke and South County contingents who sought additional funding for Morgan Hill to ensure that we receive our fair share of funding.

Mr. Bjarke said that when staff spoke to County officials, they committed to City staff that Morgan Hill's portion of return to source funds would be spent in the South County area as City staff made it known that it wanted this to be as geographically equitable as possible; particularly South County receiving its fair share. He said that County staff approached City staff and indicated that they would apply the County's share of approximately \$800,000 of return to source, devoting this amount to the South County area. This was proposed to the County subcommittee similar to the City's Transportation and Planning Subcommittee. He stated that Supervisor Don Gage has indicated his support of this Bill/program.

Council Member Carr inquired as to the definition of South County. He noted that when VTA staff was before the Council to address the 2030 Plan, the Council addressed the fact that VTA changed their definition of South County whereby it suddenly included all of Coyote Valley. He noted that the City of San Jose has not proposed any funding source for improving County roads; relaying on the County to improve the roads. Now, the County is stating that they will spend money in South County. He inquired whether the County's funding will be going into Coyote Valley.

Mr. Bjarke indicated that County staff has indicated that they would target funds to South County which comprise of the Cities of Morgan Hill and Gilroy; not Coyote Valley.

Ms. Stuchinsky stated that it would take a 2/3 vote of the VTA Board to enact funding.

Council Member Carr expressed concern that the VTA Board has the authority to enact this Bill. Yet, at any given time, the VTA Board does not represent every City in Santa Clara County. He noted that Senator Simitian wants 100% participation. While the Council agrees that this legislation is a good idea, he expressed concern that when the VTA Board is asked to review this Bill, the City may not have a say in the matter.

Ms. Stuchinsky stated that this is the reason the City of Morgan Hill is being asked to adopt an expenditure plan. This plan will not be a part of the Bill, but will be the guidance that the VTA Board will have to follow as every city will be adopting a resolution in support of the legislature linked to the resolution. She indicated that the Bill follows the VTP 2030 projects identified by the City of Morgan Hill as its top priority projects.

Council Member Carr expressed concern that a Morgan Hill resident may feel that they are being imposed a tax without representation because Morgan Hill does not have a member sitting on the VTA Board and has no one on the Board to voice concerns with.

Ms. Stuchinsky indicated that citizens can testify at a public hearing and that the Council could hold the individual who is representing Morgan Hill, Gilroy and Milpitas on the VTA Board responsible.

Mayor Kennedy felt that although there may be some issues where there are potential flaws, the net benefits to the City would outweigh the risks. He said that the Regional Planning & Transportation Committee reviewed the Bill and recommends Council support of the surcharge.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Council Member Carr stated that he would support the resolution. He agreed that when you weigh all things, the Bill would benefit Morgan Hill. He did not believe that you can deal with transportation if not dealt with on a regional basis or beyond its borders. He felt that the City needs to think about this in a regional way. He stated that the only reservation he has deals with a structural question for VTA.

Action: *On a motion by Council Member Sellers and seconded by Mayor Kennedy, the City Council, on a 4-0 vote with Mayor Pro Tempore Tate absent, **Adopted** Resolution No. 5895, Supporting the Proposed Senate Bill 680 (Simitian) Imposing a \$5.00 Surcharge on Vehicle Registrations in Santa Clara County Annually for a Period of Eight Years to Fund Specified Transportation Improvements.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

RECONVENE TO CLOSED SESSION

City Manager/Executive Director Tewes stated that based on the matters already noticed for closed session, the Council/Agency Board needs approximately 10-15 minutes to discuss the remaining closed session items.

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 8:36 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 8:49 p.m.

CLOSED SESSION ANNOUNCEMENT

Acting City Attorney/Agency Counsel Siegel announced that no reportable action was taken in closed session.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 8:50 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY

**CITY OF MORGAN HILL
JOINT REGULAR REDEVELOPMENT
AND SPECIAL CITY COUNCIL MEETING
MINUTES – MARCH 23, 2005**

CALL TO ORDER

Chairman/Mayor Kennedy called the special meeting to order at 7:05 p.m.

ROLL CALL ATTENDANCE

Present: Agency/Council Members Carr, Grzan, Sellers, and Chairperson/Mayor Kennedy
Absent: Agency/Council Member Tate (6825 E. 4th Street, Scottsdale, AZ remote participation for
Closed Session only: 9:05 p.m. – 10:45 p.m.)

DECLARATION OF POSTING OF AGENDA

Agency Secretary/City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

Chairman/Mayor Kennedy led the Pledge of Allegiance.

PROCLAMATIONS

Mayor Kennedy presented Veronica Navarro, Project Sentinel, with a proclamation declaring April as *Fair Housing Month*.

CITY COUNCIL REPORT

None.

PUBLIC COMMENT

Chairman/Mayor Kennedy opened the floor to public comments for items not appearing on this evening's agenda. No comments were offered.

Redevelopment Agency Action

CONSENT CALENDAR:

Action: On a motion by Agency Member Carr and seconded by Agency Member Sellers, the Agency Board, on a 4-0 vote with Vice-chairman Tate absent, **Approved** Consent Calendar Item 1, as follows:

1. **FEBRUARY 2005 REDEVELOPMENT AGENCY FINANCE & INVESTMENT REPORT1**

Action: Accepted and Filed Report.

City Council Action

CONSENT CALENDAR:

Action: *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Mayor Pro Tempore Tate absent, Approved Consent Calendar Items 2-8 as follows:*

2. **FEBRUARY 2005 CITY FINANCE & INVESTMENT REPORT**

Action: Accepted and Filed Report.

3. **AWARD BUTTERFIELD BOULEVARD-SAN PEDRO AVENUE SEWER TRUNK PROJECT**

Action: 1) Awarded Contract to McGuire and Hester for the Construction of the Butterfield Boulevard/San Pedro Avenue Sewer Trunk Project in the Amount of \$303,190, Subject to Review and Approval by the City Attorney; 2) Authorized the Expenditure of Construction Contingency Funds, Not to Exceed \$30,319; and 3) Appropriated \$133,500 From the Un-Appropriated Sewer Capital Expenditure Fund (AB1600).

4. **WILDLIFE EDUCATION AND INTERPRETATION AREA DESIGNATION**

Action: Adopted Resolution 5896, Designating a Wildlife Education and Interpretation Area.

5. **TRAILS GRANT PROPOSALS AUTHORIZATION**

Action: Adopted Resolution No. 5897, Authorizing the Filing of Three Separate Applications for Local Assistance Funds from the Trails and Open Space Grant Program Under the Clean, Safe Creeks and Natural Flood Protection Program of 2000.

6. **CONTRACT FOR WORKERS' COMPENSATION THIRD PARTY ADMINISTRATOR**

Action: Authorized the City Manager to Execute a Consultant Services Agreement for Third Party Administration of Worker's Compensation at a Cost Not to Exceed \$48,000 Annually, and \$68,000 Over the Term of the Agreement; Subject to Review and Approval by the City Attorney.

7. **RESOLUTION SUPPORTING RETENTION OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)**

Action: 1) Adopted Resolution No. 5898, Requesting that Congress Retain the CDBG Program as a Separate and Distinct Program with Fiscal Year 2006 Funding at the Same Levels as in Fiscal Year 2005, Including Using the Current System of Allocations.; and 2) Directed Staff to Send the Resolution to Both of California's United States Senators, Morgan Hill's Congressional Representative and the League of California Cities.

8. **PUBLIC-PRIVATE PARTNERSHIP OF THE OUTDOOR SPORTS COMPLEX REQUEST FOR PROPOSALS SUBMITTAL**
Action: Confirmed Evaluative Process with the Sole Applicant.

City Council Action

PUBLIC HEARINGS:

9. **COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) ANNUAL ALLOCATION (FISCAL YEAR 2005-2006) – Resolution No. 5899**

Director of Business Assistance and Housing Services Toy presented the staff report; identifying staff's recommended CDBG Fiscal Year 2005-2006 allocations. He informed the Council that the non CDBG funds will be allocated as part of the budget approval process.

Mayor Kennedy opened the public hearing.

Cecelia Clark, Community Solutions, acknowledged and thanked the Council and staff for its continued support of the El Toro Youth Center and La Isla Pacifica, the confidential battered women and children's shelter in South County. She indicated that Lori Escobar, the Director of the El Toro Youth Center, wanted to be in attendance this evening to share some of the exciting things taking place at the Youth Center such as the new computer lab and technology program, but was ill.

Ann Marquart, Executive Director of Project Sentinel, thanked the Council for providing past and present financial support and for applying pressure a number of years ago to have them balance services and their budget with surrounding jurisdictions. This pressure has helped to save services in South County. She indicated that Project Sentinel continues to provide tenant/landlord counseling and dispute resolution. She stated that the needs for services continue to be maintained and grow. In response to increased services, they have increased their proactive educational services to housing providers.

Cheryl Huguenor, Program Director for Live Oak Adult Day Services, thanked the Council for its ongoing support of the daycare center for the elderly. This is their 12th year, and remains the only adult daycare in South County. They continue to serve those who are dependent, frail and unable to care for themselves and allow family members to take a break from care giving.

Ragan Henninger, EHC Life Builders, addressed the Sobrato Transitional Housing Center, a new 140 bed shelter to be located in Gilroy; the Baccardo Family Living Center located in San Martin and the Winter Armory Program located in Gilroy. The programs will serve 65 Morgan Hill residents. She stated that she is thankful and grateful for the generous support of the Morgan Hill Community Foundation and for the 32 Morgan Hill residents who volunteer as well as the 143 donors.

Irene Lukefahr, representing Catholic Charities, spoke in support of Depot Commons. She addressed the successes of the parents residing in Depot Commons. She indicated that there have been and continue to be significant improvements/upgrades to the Depot Commons property.

Mary Clarke, representing the Long Term Care Ombudsman Program, indicated that the role of this organization is to advocate, investigate complaints, resolve problems, mediate, provide broker information, witness self care directives, and educate the public. She stated that the program includes a volunteer component, reporting that they have placed a volunteer within the City of Morgan Hill in the last half year.

No further comments being offered, the public hearing was closed.

Council Member Sellers said that this is always an opportunity that comes to the Council each year and that it is heartening to hear about the successes that have occurred in the last year. He felt that these are vital, fundamental services that are being provided by each of the agencies in the community. He said that it is always frustrating to go through this process as there is more to be done and that there are fewer resources available. He was pleased that the City was able to provide these resources in the community and do a small part to help out. He felt that it was appropriate to defer funding for the Dayworker Center until such time that staff comes on board. He said that CDBG funds, as meager as they are, are vital to this community and every community in the country. In the past few years, this funding source has been threatened by budget cuts or total elimination. He stated that he received assurances today from a staff member from Congressman Pombo's office that he would not support elimination of these funds. He indicated that the City would be monitoring to make sure that Congressman Pombo and other members in Congress continue to support funding these vital programs.

Council Member Grzan noted that these are annual expenditures. He inquired whether it would be possible to include a paragraph on how these dollars will be used. He would like to tie a description of each service and how they would be utilized.

Mr. Toy informed the Council that each contract includes a scope that is tied to objectives. Further, agencies need to report quarterly to staff on how they are meeting these objectives.

Mayor Kennedy thanked the agencies for their hard/good work they provide the community.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Mayor Pro Tempore Tate absent, **Adopted** Resolution No. 5899, Appropriation of Fiscal Year 2005-2006 CDBG Funds.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Mayor Pro Tempore Tate absent, **Appropriated** the Carry-Over of Approximately \$12,773 from Fiscal Year 2004-2005.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Mayor Pro Tempore Tate absent, **Authorized** the City*

Manager to do Everything Necessary for the Implementation of the CDBG Program, Including Execution of all Required Contracts as laid out in the staff report, noting that funding for the Dayworker center is to be deferred until such time that staff member(s) come on board.

City Manager Tewes noted that earlier this evening, under the Consent Calendar, the Council adopted a resolution requesting that Congress continue the CDBG Program as it is at risk. He stated that the President is proposing significant reductions and that the House and Senate have different proposals. With Council concurrence, staff will forward the Resolution to the City's Congress representatives and to the groups who have expressed their support this evening so that they can pass on the importance of their programs to the community and congressional representatives.

City Council Action

OTHER BUSINESS:

10. PROPOSED VALLEY TRANSPORTATION AUTHORITY (VTA) LONG-TERM TRANSIT CAPITAL INVESTMENT PROGRAM

Deputy Director of Public Works Bjarke informed the Council that it would be receiving a presentation on the proposed VTA Long Term Transit Capital Investment Program. He indicated that his program is the transit component of the VTP 2030, the 30 year long range blue print for transportation spending in Santa Clara County. He indicated that there were VTA representatives who agreed to make this presentation to the Council and introduced Carolyn Gonot, Chris Augenstein, Bernice Alaniz, and Kat Mereigh. He informed the Council that VTA staff is looking for feedback and input from Council members.

Mayor Kennedy opened the floor to public comment.

Carolyn Gonot, Chief Development Officer with VTA, indicated that the presentation this evening would be a description of the Plan, the rationale behind the Long Term Transit Capital Investment program, the specific components, and a brief summary about the revenue/expenditure plan. She informed the Council that VTA staff is making presentations to each local jurisdictions and stakeholders in order to promote dialogue about the revenue and expenditure plans and encourage comments on this program to be sent directly to the VTA Board on behalf of each jurisdiction. She proceeded to present a power point presentation on the VTA Long Term Transit Capital Investment Program, identifying the 30-year plan to deliver the entire 2000 Measure A transit improvement program. She indicated that the total operating budget for VTA is \$350 million. She said that VTA is trying to cover current operations and build up its operating reserves. She indicated that the VTA Board has a policy of a 15% operating reserve. She stated that VTA is evenly matching its revenues and expenditures and that over the next two years, VTA will build up to the 15% operating reserves again. She addressed VTA's long term investment strategy (e.g., no new tax/revenue stream, look at a new permanent ¼ cent sales tax; and a permanent ½ cent sales tax with 75% of this sales tax going to VTA and 25% to cities for local transportation projects). She informed the Council that in December 2004, the VTA Board approved the

release of the Long Term Investment program and that in February 18, 2005, the draft document was released for public review. During the months of March through mid-April, VTA will receive feedback from each City and Town Councils as well as the Santa Clara County Board of Supervisors. On April 22, the VTA Board will conduct a workshop to discuss the two year budget as well as discussing this program. She stated that VTA staff will be collating all comments, positions and/or recommendations received from each city council. In mid May, the recommendations will be presented to each of the advisory and standing committees. It is anticipated that the VTA Board will consider the draft TCIP in June 2, 2005.

Mayor Kennedy thanked Ms. Gonot for her presentation. He indicated that he and Council Member Sellers serve on different VTA committees: Council Member Sellers serving on the Policy Advisory Committee and that he serves as an alternate Board Member on the VTA Board of Directors. He stated that he has a major concern with the Caltrain service to South County. He said that funding for Caltrain South County service does not begin in earnest until 2016, after fully funding BART. He noted that the additional trains that have been authorized do not include a reverse commute. He indicated that a reverse commute is something that local employers have been requesting for many years. He stated that a reverse commute was contained in the original Measure A wording. He felt that double tracking would allow for a reverse commute where the trackage rights agreement just received does not allow for a reverse commute.

Council Member Grzan inquired whether the build out of 80,000 new residents in Coyote Valley is addressed as part of this Plan.

Ms. Gonot said that a stop would be planned by Caltrain in Coyote Valley. She confirmed that what has been negotiated with Union Pacific is not a reverse commute. She said that this is an area that VTA staff would need to look at in the future. She indicated that there would be some improvements that would occur with the five additional round trips with some build out of the tracks.

Mayor Kennedy stated that it was his belief that the modeling traffic counts did not include the traffic counts that would be generated in Coyote Valley.

Ms. Gonot said that the current model for Coyote Valley has a lower level of land use than what the City of San Jose is currently looking at for this area.

Chris Augustine clarified that what is included in the plan is 5,000 jobs, minimal jobs in Coyote Valley. He stated that with the update of the VTP 2030 in a few years, anything that has been decided by the City of San Jose regarding Coyote Valley will be included in that work.

Council Member Grzan noted that the plan before the Council is requesting sales tax dollar; yet, there is a major component out there that could significantly alter what can be done or call for additional resources that VTA does not have. He did not know how the Council can approve a plan with such a major portion (Coyote Valley) not being included.

Ms. Gonot said that the City of San Jose is looking at an internal transportation system for Coyote Valley and that VTA would be serving regional needs. On the regional level, she agreed that VTA would need to pick up the cost and confirmed that the cost is not included in the Plan at this time for any new services that would be required for Coyote Valley.

Mayor Kennedy referred to Bart, the Silicon Valley Rapid Transportation Corridor project. He said that the Federal Transportation Administration is not recommending approval of additional funding for Bart. He inquired as to the funding sources for the \$1.6 billion addressed by VTA (page 12 of the report).

Ms. Gonot said that most of the \$1.6 billion in funding would come from two projects: Caltrain Electrification, and the Dumbarton Rail Corridor.

Mayor Kennedy said that he has heard that funding for the extension of Bart from Fremont to Milpitas would come from additional revenue for Bart to the airport extension. He did not believe that this funding exists.

Ms. Gonot said that Bart is still trying to fill the gap for the Warm Springs extension. This gap ranges from \$150-\$300 million. She indicated that the Metropolitan Transportation Commission (MTC) included funding in the Regional Transportation Plan and assumes some funding for it. However, she confirmed that there is a funding gap.

Mayor Kennedy felt that major cities who benefit from a subway or rapid transportation system should be partners in the funding of the project. He inquired whether the Cities of San Jose, Santa Clara or Milpitas are providing funding to support the Bart extension.

Ms. Gonot said that specific funding from these cities is not included in the plan. VTA staff is planning to take back to the VTA Board, as part of the budget, a recommendation to conduct a Bart economic analysis to see the benefits/values of Bart to cities.

Mayor Kennedy felt that there was a funding scenario on the table such that Bart would receive federal funding to extend it to Berryessa and that the next segment would be separately funded.

Ms. Gonot said that funding for the extension of Bart is not being recommended at this time because VTA staff is still working on a model. She said that it takes two years to review the Bart system. She said that a financial source has not been identified. She said that VTA staff has heard that it needs to lower its cost effectiveness ratings/cost per new rider; and lowering the level of federal participation. She said that VTA is looking at \$973 million and that the federal government felt that this was too high. VTA has made a proposal back to the FTA, requesting federal participation only for the segment to Berryessa and that the segment south of Berryessa would be completed with local funding.

Mayor Kennedy felt that the City of San Jose should have a much higher stake at paying for the cost of Bart service as they are a primary benefactor of this service. He referred to the Transit User Benefit Number. He stated that it was his understanding that there is a cut off of \$25 per new rider and that Bart is significantly higher than this. He inquired whether it would be feasible/possible to reduce the \$25 per

new rider cost. He felt that the original plan included more zero emission buses than this current proposal contains.

Ms. Gonot said that it could be possible to meet a \$25 per new rider at both ends of the extension. She indicated that VTA staff assumed that the entire fleet would move toward zero emission buses. She said that the cost for zero emission buses is approximately \$3 million per bus. It is the hope that the costs would go down and technology improved.

Mayor Kennedy suggested that Council members state general thoughts. He recommended that the Regional Planning and Transportation Committee help draft a letter based on Council input, forwarding this letter to the VTA Policy Advisory Committee who will be meeting on April 1. He felt that it was important that they see the Council's comment. He indicated that the full policy advisory committee will be meeting on April 14. He felt that it would be good to get the City's formal statements to the VTA Board's April 22 workshop.

Council Member Grzan felt that Mayor Kennedy raised good points, including the comments relating to reverse commute and when the dollars would be received to expand train services. Further, that it would be important to have those cities that would benefit most from these projects pay most into the plan. He felt that these were important points that need to be included in the letter. He also felt that the Coyote Valley issue is important, noting that it is not included in the Plan. He did not know how this would change the priorities in funding. Further, the City may not see projects completed due to the Coyote Valley project. He stated that he trusts the Committee to draft a letter to include Council comments.

Council Member Sellers felt that it was important that the City calls out the items that have specific relevance to South County. He said that approximately 80% of the City's workforce travel north. He felt that the Council needs to keep in mind that this may be the primary reason that buses and trains travel in one direction. He felt that it is desirable to balance the reverse commute; something that would be embraced by South County. He agreed that there is no way to plan for anything other than what has already been designated and firmly stated by the City of San Jose for Coyote Valley. He said that there is a concern that there would be a long term shift in funding to Coyote Valley. He felt that there were opportunities and that it is important for VTA to continue to think about these (e.g., light rail). He stated that there is discussion about long term planning being considered for the entire South County region, including what the big picture will look like. He noted that the service upgrades to Caltrain are to commence this year, slows down and then picks up in subsequent years. He further noted that electrification is not supposed to start until 2014. He inquired as to the South County service upgrades associated with Caltrain as he felt that there is a discrepancy in what has been indicated and what was discussed earlier.

Ms. Gonot stated that the Caltrain service upgrades would begin in 2005 and would continue through 2010. She said that there are some Measure A contributions and other contributions that would assist with the upgrades. VTA is looking at providing the improvements worked out with Union Pacific so that the five additional round trips can be accommodated. VTA staff would like to get this plan ready to see if some of the projects can move forward and seek other funds to match Measure A funds. She said that

VTa staff would like to pull together all cities, along the Caltrain line, and develop a plan with Measure A funds. She indicated that VTA staff is proposing \$200,000 in funding to move forward with this plan.

Council Member Sellers recommended that the City's letter encourage the technical advisory effort be implemented as soon as possible.

Council Member Carr said that in looking at the budget spreadsheets, all of them assume a new 3/8 cent sales tax effective 2007. He inquired whether the VTA Board or staff performed scenarios without this sales tax.

Ms. Gonot said that the VTA Board has not directed staff to look at different percentages at this time. She said that this is a comment VTA staff has been receiving and that staff will recommend that the VTA Board look at different percentages in sales tax.

Mayor Kennedy said that he has been stating all along that it would be good to have Bart come to San Jose and Santa Clara; but not at the loss of significant projects. He felt that it was a good vision, a good system, and that it makes sense to extend Bart. However, he felt that there may be better ways to make this work. He inquired as to Council thoughts regarding the extension of Bart.

Council Member Sellers stated that Morgan Hill is a commuting community. He said that he tries to think regionally and felt that a variety of transportation modes would be used by the community, and that the popularity of the extension of Bart was a significant reason the measure passed. Not moving forward with Bart would be disingenuous to the voters.

Council Member Carr said that he sees the value of extending Bart and continues to be a supporter of it, but not at the expense of the services that South County needs. He would like to see what services would be provided without a new tax. Would no sales tax mean adjusting all other projects in order to complete one project? He stated that he would not support this scenario. It is his hope that the VTA Board would be open to taking a look at different suggestions that members have made about looking at different phasing approaches, paying for it in stages. He hopes that there will be flexibility, on the Board, to take a look at this and find a creative way to achieve the goal of bringing Bart into Silicon Valley.

Council Member Grzan felt that VTA would be in line with a lot of other agencies who will also be seeking sales tax from the voters. He felt that the public will be overwhelmed with a number of issues and that the cumulative affect could be a negative response from the public on any project. This would result in resources dwindling significantly. He is concerned that the Bart project would take the remaining resources and that Morgan Hill will not receive its fair share of funding to meet the community's needs. He too is concerned about the Bart extension and having it funded by Morgan Hill residents. He would like to see more participation by those cities that would benefit most from this as this is where funding should come from. Although there may be Morgan Hill residents who use Bart, he felt that there are other communities who would be greater users.

Mayor Kennedy said that the Board of Supervisors and Pete Kutas, the County's Chief Executive Officer, has brought forward a 1/2 cent sales tax that would include funding for VTA, the County, and

local government. This would be an all purpose sales tax. Although VTA may not get a majority of this funding, the other local jurisdictions and the County would get a portion of a ½ cent sales tax.

Council Member Sellers said that the ½ cent sales tax remains conceptual and is worth supporting. He felt that City staff and other South County representatives have done a great job in making sure that some of Morgan Hill's needs are met and that there were specific things in South County that were included. He felt that it would be important that the Council weighs in this evening in support of the ½ cent sales tax because there are specific funds for Morgan Hill and the region that are designated and would allow for the extension.

Mayor Kennedy said that the VTA's proposal would utilize funding for local transportation and road projects while the County's proposal for a ½ cent sales tax would be used as an all purpose tax. He said that the Silicon Valley Leadership Group is conducting a public poll and looking at different alternatives. He recommended that the City await the results of the poll before getting behind any tax measure.

City Manager Tewes said that Pete Kutras has been working at the direction of the Santa Clara County Board to develop options; indicating that the Board has not adopted any of the options. Mr. Kutras presented a series of options at a meeting of the Santa Clara County Cities Association that includes a ½ cent sales tax to be used for general purposes with a share of this to be allocated to cities to be used for their general purposes. He clarified that VTA's proposal is that funding returned to cities must be used for transportation purposes, while the County's proposal, the funds returned to cities can be used for any municipal purpose. In the County's proposal, VTA was to receive some funding, but that a specific proposal was not identified.

Mayor Kennedy recommended that the Council wait until it receives more information before supporting this proposal or any other proposal at this time.

Council Member Sellers stated that he would support Mayor Kennedy's recommendation, noting that the County has not presented a concrete proposal. He stated that he would support VTA's proposal in concept.

Mayor Kennedy said that it may turn out that there is only one proposal that ends up moving forward.

Council Member Sellers agreed to state that if there is a shortfall in funding that is needed to complete the projects that the region has outlined for long term transportation stability, there needs to be a way to bridge the gap.

Mayor Kennedy said that in general, he would agree that there is a funding shortfall and a gap that needs to be closed. However, he was not willing to support all of the funding going to VTA and no funding to cities and Counties; funding that gives latitude or freedom for use of funds.

Action: *It was the consensus of the City Council that the Regional Planning and Transportation Committee is to prepare a written response and forward it to VTA.*

11. LEASE WITH SOLARA ENERGY

Council Member Sellers said that he had preliminary discussions with Solara about the possibility of working with them professional at some point in the future. Therefore, he would be recusing himself from participating on this item. He excused himself from the Council Chambers.

Director of Business Assistance and Housing Services Toy presented the staff report relating to a lease with Solara Energy for the space adjacent to the Police Station on Vineyard Boulevard and appropriates \$40,000 from bond proceeds to install public improvements. He addressed the general business terms associated with the lease agreement.

Mayor Kennedy disclosed that he met with Solara representatives and the Economic Development Committee. He indicated that there was some conversation about installing a solar energy system on the facility. He inquired whether this was a part of the agreement.

Mr. Toy said that at one point, staff spoke with Solara representatives about incorporating a solar energy system within the lease structure. It was determined that it would be better to separate the lease terms from purchasing solar energy equipment. If Solara representatives are interested in making a proposal to the City to provide solar power, the City would consider this as a normal purchasing requirement.

Mayor Kennedy recommended that City staff work with Solara to install a demo facility that could serve as a model/pilot for expanding the use of solar energy in the community.

Council Member Grzan inquired whether the lease was representative of a fair market rate.

Mr. Toy said that the lease term reflects the current market rate. He clarified that Solara would be proposing retail sales.

Mayor Kennedy opened the floor to public comment.

Chris Bryant, speaking on behalf of the Chamber of Commerce's Economic Development Committee, stated that there is focus for attracting businesses that deal in the alternate energy field. He noted that this is a perfect opportunity to support growth in this field by helping to get a manufacturer up and running in Morgan Hill. He noted that Solara started its business in Morgan Hill and that it is time to bring them back to Morgan Hill. He requested Council support of the lease as it would bring the right kind of business into Morgan Hill.

Peter Burcat said that the police facility would be a starting location for his business. He said that he is in the process of expanding into manufacturing and selling his product. This facility/location would have an area open to the public to view equipment and that the public would have the ability to purchase equipment on site. It is proposed to retain this facility for office space and look for a facility of 10,000+ square feet for further production in the future. He said that it would be his intention to discuss certain projects with the City, indicating that he has had discussions with City staff about the aquatics center.

He also had discussions with Mr. Toy about the police station to see if there is the ability of installing solar or other forms of renewable energy on city projects.

No further comments were offered.

Council Member Grzan inquired whether this type of manufacturing would be noisy or a use that would be incompatible with the police facility.

Mr. Toy said that it was his understanding that there may be some hand soldering, but would be quiet and would not be intrusive.

Action: *On a motion by Council Member Grzan and seconded by Council Member Carr, the City Council, on a 3-0 vote with Council Member Sellers and Mayor Pro Tempore Tate absent, **Authorized** the City Manager to Negotiate, Prepare, Execute, and Implement a Five-Year Lease Agreement with Solara Energy to Lease the 6,080 Square Foot Space Adjacent to the Police Station at 16200 Vineyard Boulevard; Subject to the Terms Stated in the Staff Report.*

Action: *On a motion by Council Member Grzan and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Sellers and Mayor Pro Tempore Tate absent, **Appropriated** \$40,000 From the Police Facility Bond Proceeds to Fund the City's Improvements Needed to Lease the space.*

Council Member Sellers resumed his seat on the Dias.

**12. APPROVE PURCHASE AND INSTALLATION OF SECOND SLIDE FROM
WHITEWATER WEST INDUSTRIES AND CALIFORNIA COMMERCIAL POOLS
FOR AQUATICS CENTER**

City Manager Tewes informed the Council that it has been provided with a supplemental staff report that provides the result of some informal proposals.

Director of Public Works Ashcraft presented the staff report, indicating that the proposal before the Council is for the approval of a second slide at the aquatics center and that the Council determine that a competitive bid, upon notice, would not be likely to result in a lower price for the City from a responsible bidder, or would cause unnecessary expense or delay under the circumstances for the work to install the second slide at the aquatics center. Based upon the proposal, staff recommends the Council approve purchase orders to Whitewater West Industries in the amount of \$82,200 to install the second slide and to California Commercial Pools in the amount of \$39,450 for the associated pump, electrical and plumbing for the second slide at the aquatics center. It is staff's hope to have the slide installed before the peak season. He said that the contractor has stated that they can install the second slide by the Memorial Day weekend.

Council Member Grzan said that this particular item has a benefit as it has a return on investment of approximately \$40,000 in three years. He inquired how the rate of return would be measured.

Recreation and Community Services Manager Spier said that this was the credit given to a second slide by the Sports Management Group. She said that staff conducted an analysis on the economic impacts associated with a list of items costing approximately \$600,000 (e.g., parking lot, second slide, concession stands). She stated that a measurement would need to be based on returns (e.g., daily fees, attendance numbers).

Council Member Grzan expressed concern that assumptions were made that the City would be making a return of a certain amount of dollars over a period of time; but that the City has no way of knowing whether these projects will actually have a return on investment.

City Manager Tewes indicated that staff will continue to follow the Council's direction of operating the aquatics center on a break even basis. He felt that it would be appropriate for the Council to ask staff to return with revenues and usage, comparing the ratios next year with the current year. Staff would be able to replicate the estimates that the Sports Management Group was able to provide to the Council. He agreed that there is no way to precisely pin point the return on a particular element.

Council Member Grzan said that the proposal that was brought to the Council in February 2005 contained specific dollar amounts associated with each individual items contained on the list. Now, it is being stated that it is not known what the individual items would be bringing in, in terms of a certain amount of dollars. He did not believe that there was a direct correlation between the items presented in the February report. If the City is going to state that the second slide will be bringing in a certain amount of dollars, he felt that there needs to be a measurement tool that will determine whether it did or not bring in the identified rate of return.

Mayor Kennedy inquired whether the City shows an increase in net annual revenue in the amount of \$40,000, would this be an indication of a success on this investment.

Council Member Grzan stated that in February, staff returned with a list of items that would generate a certain amount of dollars. However, the City does not have a mechanism in place that would report back whether the individual item was responsible for increased revenue. If staff is making a proposal before the Council and stating that an item would generate a certain amount of dollars, he felt that the City needs to have a measurement system in place that would allow it to evaluate this over a period of time. If a measurement system is not in place, staff should state that overall, the items will bring in a certain amount of dollars.

Council Member Sellers felt that the numbers are credible and that they are predicated on the assumptions made by the Sports Management Group. He noted that the Sports Management Group clearly delineated specific components. When the Council conducted value engineering and eliminated the second slide, a question was raised as to what it would cost the City in terms of savings and revenues. He is encouraged by the fact that the Sports Management Group's estimates, on the revenue side, were fairly low. He noted that the aquatics center far exceeded the number of individuals who

would be using the facility in the first year. He felt that with enhancements, revenues would be increased. He also felt that there may be ways to quantitatively figure out the increased revenues. He said that this is part of delivering the entire facility that the Council promised the community. He felt that the aquatics center would balance out at the end of the year and that it was important to keep in mind that the City is providing a community service. Adding a second slide would enhance the City's ability to do so. He felt that the revenues presented by the Sports Management Group were conservative.

Council Member Grzan said that when the City value engineers items out only to return the item at a higher cost than what would have originally been paid, he did not believe that the Council did any value engineering at all. He expressed concern that if this is to be the practice the Council undertakes with the community center or other projects, thought needs to be given that the items value engineered out would return at a higher price. If this is the case, he would have preferred paying for the item upfront and save on the increased dollars that would result if added at a later date.

Council Member Sellers said that a year ago, the City did not know that the attendance numbers would triple from 600 a day to the 1,900 individuals who actually used the facility.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Council Member Carr and seconded by Council Member Grzan, the City Council, on a 4-0 vote with Mayor Pro Tempore Tate absent, **Approved** staff's recommended action.*

13. REQUEST FOR SPONSORSHIP OF THE 26TH ANNUAL MORGAN HILL MUSHROOM MARDI GRAS EVENT

Council Services & Records Manager Torrez informed the Council that a request has been made by Sunday Minnich for City sponsorship of the Mushroom Mardi Gras; specifically requesting \$10,000 to help with the costs associated with the 26th annual Mushroom Mardi Gras event to be held on May 28 and 29. She stated that there is \$11,164 remaining in the Community Promotions budget to fund the request, should the Council wish to sponsor the event. However, Independence Day Inc. will soon be approaching the Council for co-sponsorship of the Fourth of July festivities and that the organization has indicated that they would be requesting the \$11,164, if not more. She indicated that Ms. Minnich was in attendance and could expand on the staff presentation and respond to questions the Council may have.

Mayor Kennedy opened the floor to public comment.

Sunday Minnich indicated that this is the 26th Annual Morgan Hill Mushroom Mardi Gras event to be held on May 28 and May 29. She noted that the festival has been moved to the downtown due to extenuating circumstances at Community Park. She stated that a free festival would be provided to the community. In order to continue the educational scholarship program and to continue the fundraising/donations provided to non profit organizations in Morgan Hill, she stated that this festival needs additional support from the City and community members to assist with the costs associated with putting on the festival. She requested that the City partner with this event and show its support for the

educational funding; noting that the dollars received from the Mushroom Mardi Gras festival would go back into the community for the non profit organizations, schools and educational scholarships. She stated that any City assistance would be appreciated. As a partner, Mushroom Mardi Gras would be willing to provide the City with a large space in a high visible location where it can promote the many services that it provides.

No further comments were offered.

Council Member Grzan noted that the recommended action was somewhat cautious in terms of where the dollars are to come from. If the Council were to fund this event, few dollars would remain in the Community Promotions budget to fund the Fourth of July activities.

City Manager Tewes said that the event this particular fund anticipated was the Fourth of July event. He said that Independence Day Inc. (IDI) needs advance money that is used for the purchase of fire works and to pay for other expenses. If the City were to continue with this tradition, the Council would then need to appropriate additional funds over and above the funds from the Community Promotion budget from the General Fund reserves to pay for these activities. He said that once the Council deals with this issue, it would be appropriate to sit down with the various festival sponsors and the Downtown Association and develop common policies. He stated that there are at least four events held in the downtown, this would be the second event of the four that the City would help finance and that the other two tend to pay for themselves. The common policies would stipulate under what circumstances the City would offer sponsorship and appropriate public money for these festivals and under what circumstances the City would not.

Council Member Carr recommended that the Mushroom Mardi Gras organization present the Council a budget to determine the appropriate use of taxpayer dollars.

Ms. Minnich indicated that she did not provide a budget to City staff. She stated that the expense budget is approximately \$110,000. It is Mushroom Mardi Gras' goal to provide approximately \$20,000 in scholarship funding. This event usually gives out \$10,000 in donations to non profit clubs and organizations that provide services during the event. This event provides complimentary space to non profit organizations for their fundraising efforts.

Council Member Sellers stated that a decision would be easy if the resources were available. He recommended that the Council consider who needs funds and how best to allocate these funds similarly to how the Council awarded CDBG funds. He stated that he was not prepared to make a decision until he hears back from IDI. He suggested that staff return with a recommendation that may provide funding for both festivities.

Action: *On a motion by Council Member Sellers and seconded by Council Member Grzan, the City Council, on a 4-0 vote with Mayor Pro Tempore Tate absent, **Requested** that staff work with IDI and determine their needs; returning with options for providing resources as appropriate, for IDI and Mushroom Mardi Gras by mid April.*

14. 9TH ANNUAL SACRAMENTO ADVOCACY TRIP

Council Services & Records Manager Torrez informed the Council that the 9th annual Sacramento Advocacy Trip coordinated by the Silicon Valley Leadership Group is scheduled to take place on Wednesday and Thursday, April 27 and April 28. This annual trip is attended by public officials and private sector representatives who plan to meet with legislators to address regional issues. Staff would like to ascertain whether a majority of the Council members are planning to attend this trip and if so, whether the Council would like to adjust its April 27 meeting schedule.

Council Member Carr indicated that he has plans to travel to Sacramento on Thursday, April 28. However, should the Council meeting be canceled, he would attend both days.

Council Member Sellers recommended that the Council not plan on meeting on April 27 unless staff anticipates that there will be a significant increase in items coming up in April.

Mayor Kennedy noted that the Finance Committee is scheduled to meet on April 27. Should the Council/Redevelopment Agency agree to cancel the April 27 meeting, the Finance Committee may need to be rescheduled as well.

Action: *It was the consensus of the Council to Cancel the April 27, 2005 meeting.*

City Council Action

CONSENT CALENDAR:

Action: *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Mayor Pro Tempore Tate absent, Approved Consent Calendar Item 15 as follows:*

15. CLOR-TEC CHLORINE GENERATION SYSTEM SOLE SOURCE REQUEST FOR AQUATICS CENTER CAPITAL IMPROVEMENT PURCHASE AND INSTALLATION

Action: *Approved Staff's Request to Sole Source the Purchase of a Chlorine Generation System from Severn Trent Services as a Recommended Item from the Capital Improvement List for the Aquatics Center.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

Redevelopment Agency and City Council Action

CLOSED SESSIONS:

City Attorney/Agency Counsel Leichter announced the below listed closed session items:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority:	Government Code Sections 54956.9(b) & (c)
Number of Potential Cases:	4

Vice-chairman/Mayor Pro Tempore Tate joined the Council for the closed session portion of the meeting from Arizona.

OPPORTUNITY FOR PUBLIC COMMENT

Chairman/Mayor Kennedy opened the Closed Session items to public comment. No comments were offered.

Vice-chairman/Mayor Pro Tempore Tate opened the Closed Session items to public comments. No comments were offered.

ADJOURN TO CLOSED SESSION

Chairman/Mayor Kennedy adjourned the meeting to Closed Session at 9:03 p.m.

RECONVENE

Chairman/Mayor Kennedy reconvened the meeting at 10:45 p.m.

CLOSED SESSION ANNOUNCEMENT

Chairman/Mayor Kennedy announced that no reportable action was taken in closed session.

ADJOURNMENT

There being no further business, Chairman/Mayor Kennedy adjourned the meeting at 10:46 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, AGENCY SECRETARY/CITY CLERK

**CITY OF MORGAN HILL
JOINT SPECIAL REDEVELOPMENT
AND SPECIAL CITY COUNCIL MEETING
MINUTES – MARCH 23, 2005**

CALL TO ORDER

Chairman/Mayor Kennedy called the special meeting to order at 7:05 p.m.

ROLL CALL ATTENDANCE

Present: Agency/Council Members Carr, Grzan, Sellers, and Chairperson/Mayor Kennedy
Absent: Agency/Council Member Tate (6825 E. 4th Street, Scottsdale, AZ remote participation for
Closed Session only: 9:05 p.m. – 10:45 p.m.)

DECLARATION OF POSTING OF AGENDA

Agency Secretary/City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

Chairman/Mayor Kennedy led the Pledge of Allegiance.

PUBLIC COMMENT

Chairman/Mayor Kennedy opened the floor to public comments for items not appearing on this evening's agenda. No comments were offered.

Redevelopment Agency and City Council Action

CLOSED SESSIONS:

The City Council/Redevelopment Agency deferred this closed session item until the conclusion of the Joint Regular Redevelopment Agency/Special City Council meeting agenda.

Chairman/Mayor Kennedy convened the closed session portion of the meeting at 9:05 p.m.

City Attorney/Agency Counsel Leichter announced the below listed closed session items:

1.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION:

Authority:	Pursuant to Government Code 54956.9(a)
Case Name:	In Re Gregory T. Hemming and Kimberley L. Hemming
Case Number:	United States Bankruptcy Court, Eastern District of California, Case No. USBC-EDC-2004-20318-B-7

Vice-chairman/Mayor Pro Tempore Tate joined the Council for the closed session portion of the meeting from Arizona.

OPPORTUNITY FOR PUBLIC COMMENT

Chairman/Mayor Kennedy opened the Closed Session items to public comment. No comments were offered.

Vice-chairman/Mayor Pro Tempore Tate opened the Closed Session items to public comments. No comments were offered.

ADJOURN TO CLOSED SESSION

Chairman/Mayor Kennedy adjourned the meeting to Closed Session at 9:08 p.m.

RECONVENE

Chairman/Mayor Kennedy reconvened the meeting at 10:45 p.m.

CLOSED SESSION ANNOUNCEMENT

Chairman/Mayor Kennedy announced that no reportable action was taken in closed session.

ADJOURNMENT

There being no further business, Chairman/Mayor Kennedy adjourned the meeting at 10:46 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, AGENCY SECRETARY/CITY CLERK



CITY COUNCIL STAFF REPORT

MEETING DATE: April 6, 2005

WATER CONSERVATION SUBMETERING ORDINANCE

RECOMMENDED ACTION(S):

1. Continue the Public Hearing to April 20

EXECUTIVE SUMMARY: The City's water supplies are limited and efforts are needed to ensure that City policies, practices, and requirements encourage the efficient use of water. National research has shown that multifamily dwellings that have their own water meter use, on average, 15% less water than multifamily dwellings that do not have their own water meter. Because of the substantial savings this represents, staff included the development of a submetering ordinance in the Water Conservation Workplan adopted by the City Council on September 1, 2004.

The City Council initially reviewed this item on March 16. At that meeting, staff recommended that the public hearing be continued until April 6 to allow staff to make a slight change to the ordinance. Staff has not yet completed this work and recommends that the public hearing be continued until April 20.

FISCAL IMPACT: No budget adjustment is requested at this time.

Agenda Item # 20

Prepared By:

Program Administrator

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: April 6, 2005

ZONING AMENDMENT, ZA-05-02: TEXT AMENDMENT – MONUMENT SIGNS/FORD MOTOR CO.

RECOMMENDED ACTION(S):

1. Open/close Public Hearing
2. Waive the First and Second Reading of Ordinance
3. Introduce Ordinance

EXECUTIVE SUMMARY: The applicant is requesting to amend the City Sign Code to increase the maximum allowable sign area for on-site freestanding signs in Commercial and Industrial Zoning Districts from 48 sf to 50 sf. The Council reviewed this item at the March 16 Council meeting, and requested additional information regarding the following: number of sites that would be affected by the text amendment, sign regulations for other cities, and the City of Morgan Hill variance review process.

There are approximately 550 parcels that are zoned PUD in the City of Morgan Hill, of which approximately 57 are five acres or greater in size. Of the 57 five-acre plus sites, 40 are zoned Commercial or Industrial PUD (excluding shopping centers). Therefore, the proposed text amendment would apply to 40 parcels in the City. It should be noted that of the 40 affected parcels, 13 are developed and 27 are undeveloped. Although the text amendment would apply to all 40 parcels, property owners of the developed sites may choose not to replace their existing signs with the larger sign area. Also, at least four of the 27 undeveloped sites are planned for a shopping center which the proposed sign text amendment would not apply. For the Council's reference, attached to this report are exhibits identifying the location of the 27 undeveloped Commercial and Industrial PUDs larger than five acres in size.

Staff obtained the sign regulations for the Town of Los Gatos and the Cities of Campbell, Gilroy, Santa Clara and Saratoga, as provided in Attachment A. The sign regulations varied, with Saratoga being the most restrictive and Gilroy being the least restrictive. However, the proposed sign text amendment would be consistent with the City of Campbell's regulations for freestanding signs.

At the March 16 meeting, questions arose regarding the City's variance review process, and whether or not it could be used to review requests to increase the size of signs. The purpose of a variance is to allow variation from the strict application of the City's standards in cases of extraordinary situation or condition of the land, whereby literal enforcement of the Code would cause undue hardship. In order to approve a variance request, very specific findings must be made as listed in Attachment B. Based on the findings required of a variance, Staff does not feel that the variance process would be appropriate to review sign area requests.

Staff recommends approval of the sign text amendment, increasing the maximum area for on-site freestanding signs on lots five acres or greater in size in Commercial and Industrial PUDs (excluding shopping centers) from 48 sf to 50 sf.

FISCAL IMPACT: No budget adjustment required.

Agenda Item # 21

Prepared By:

Associate Planner

Approved By:

CDD Director

Submitted By:

City Manager

Attachment A

SIGN REGULATIONS FOR ON-SITE FREESTANDING SIGNS COMMERCIAL AND INDUSTRIAL ZONING DISTRICTS

City	Maximum Sign Area ¹	Comments
Campbell	50 sf	
Gilroy	75 to 350 sf	The maximum sign area combines all signs for a given business, and does not limit the size of monument signs beyond the overall maximum
Los Gatos	40 sf	Standard is for 'ground' signs less than 7-ft tall. Lots with frontage exceeding 300 ft are allowed one additional sign. Auto dealers are allowed pole signs up to 125 sf.
Santa Clara	60 sf	
Saratoga	40 sf	Applies only to commercial zones with 5+ separate uses

¹ Sign area is based on "x" feet per linear foot of building frontage; however, the figures listed above represent the maximum allowable sign area regardless of building frontage.

Attachment B

VARIANCE FINDINGS

Section 18.60.040 Findings prerequisite to grant.

The planning commission shall grant a variance only when the following conditions are found:

- A. The variance granted shall be subject to such condition as will assure that the adjustment thereby authorized shall not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located;
- B. There are special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, which cause the strict application of this chapter to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification;
- C. The condition or situation of the specific piece of property, or the intended use of the property for which the variance is sought, is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such conditions or situations. (Ord. 559 N.S. § A (part), 1981)

ORDINANCE NO. , NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO SECTION 18.76.250.H.1.B OF THE SIGN CODE TO INCREASE THE MAXIMUM ALLOWABLE SIGN AREA FOR ON-SITE FREESTANDING SIGNS ON LOTS FIVE ACRES OR GREATER IN SIZE IN COMMERCIAL AND INDUSTRIAL PLANNED UNIT DEVELOPMENTS FROM 48 SQUARE FEET TO 50 SQUARE FEET (ZA-05-02: TEXT AMENDMENT – MONUMENT SIGNS/FORD MOTOR CO.)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.

SECTION 3. Section 18.76.250.H.1.b of the Morgan Hill Municipal Code is amended to read as follows:

18.76.250.H.1.b Commercial and industrial zone signs, On-site Freestanding Signs

Sign area: Sign area shall not exceed one square foot of sign area per each lineal foot of building frontage, up to a maximum of *50 square feet for lots five acres or greater in size and zoned Commercial PUD and/or Industrial PUD, and up to a maximum of 48 ~~forty-eight~~ square feet for all other Commercial and Industrial zones.* Up to an additional 36 square feet of sign area may be added to the *48 ~~forty-eight~~* square feet maximum for a permanent year round farmers market use. The additional 36 square feet of sign area shall only contain pricing for seasonal specials and must be incorporated within the same sign structure as permitted in the first part of this paragraph. A minimum of *24 ~~twenty-four~~* square feet of the area of such signs shall be devoted to business identification.”

SECTION 4. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 5. Effective Date Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 6th Day of April 2005, and was finally adopted at a regular meeting of said Council on the Day of April 2005, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of April 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:_____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: *April 6, 2005*

ZA-04-22 City Of Morgan Hill-Acreage Required for Animals

RECOMMENDED ACTION(S): IF NO SUBSTANTIVE CHANGES ARE DESIRED FROM FIRST READING OF ORDINANCE ON MARCH 2ND, THEN:

1. Adopt Final Ordinance; **OR** IF SUBSTANTIVE CHANGES ARE DESIRED, THEN:

1. Open/close Public Hearing
2. Waive the First and Second Reading of Ordinance
3. Introduce Ordinance

EXECUTIVE SUMMARY: The City Council introduced Ordinance #1714 on March 2, 2005. The ordinance:

- a) Eliminates the requirement for an animal use permit for keeping livestock for private uses in residential zoning districts;
- b) Increases the number of allowable livestock and relates the number to parcel size; and
- c) Imposes a requirement for a corral. Corrals on residential properties would need to be located 50 feet from all property lines for lots less than five acres, and 100 feet from property lines for lots of over 5 acres.

At the March 2 hearing, Council questioned if the existing properties with animals would be required to construct the corrals and meet the setbacks as mandated in the proposed ordinance. It was pointed out that the "Animals and Land Use" ordinance is not within the Zoning Code, and therefore existing situations would not become "legal nonconforming." It would be legally problematic for the Council to try to impose different use and fencing/corral standards on existing v. new livestock situations in residential districts. As such, under the introduced version of the new ordinance, any residential lot with existing livestock would be required to install the appropriate corral 50 or 100 feet from property lines when the ordinance became effective. It was not clear to staff whether the intent of the Council was that all existing situations would need to construct the corrals after the ordinance is final, or whether Councilpersons might have thought that existing situations would be "grandfathered in". Since the time of that meeting, staff has prepared a map of all residential parcels of 40,000 square feet or more, and examined existing situations of keeping livestock. Fence and corral locations vary widely, with most not achieving the 50-foot setback. In reality, the type of animals and the context of the lots are the more important factors to consider, such that a "one-size-fits-all" setback requirement may be unnecessary and unrealistic. In addition, it seems this easier permit should be available for open space parcels with a private residence. Therefore, staff has prepared an alternate version, which provides for the following:

- a) Establishes a new Residential Private Livestock Permit, for keeping livestock for private use in residential and open space zoning districts, but make the permit approvable by the Community Development Department,
- b) Increases the number of allowable livestock and relates the number to type of animals and parcel size, and
- c) Establishes a requirement for fencing and/or corral; the location of which is reviewed and approved by the Community Development Department in conjunction with issuance of the Residential Private Livestock Permit. Any appeal of the Department's decision would be considered by the Planning Commission at a noticed public hearing, and the decision of the Planning Commission would be final.
- d) The estimated amount of the fee for the Residential Private Livestock Permit is \$250.00, and the appeal fee would be set at \$100.00.

FISCAL IMPACT: No budget adjustment required.

Agenda Item # 22

Prepared By:

**Community
Development Director**

Submitted By:

City Manager

ALTERNATE ORDINANCE – FIRST READING

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING TEXT AMENDMENTS TO CHAPTER 6.36 (ANIMALS AND LAND USE) OF TITLE 6 (ANIMALS) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL. (ZA-04-22: CITY OF MORGAN HILL-ACREAGE REQUIRED FOR ANIMALS, AND REQUIREMENT FOR RESIDENTIAL PRIVATE LIVESTOCK PERMIT)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The proposed amendment of the Municipal Code is consistent with the General Plan and is consistent with and in the interest of public health, safety and welfare.

SECTION 2. INCORPORATING MUNICIPAL CODE TEXT CHANGES BY REFERENCE. There hereby is attached hereto and made a part of this ordinance, a text amendment to Chapter 6.36 Animals and Land Use of Title 6 of the Morgan Hill Municipal Code, contained in the attached Exhibit “A.”

SECTION 3. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 4. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 6th Day of April 2005, and was finally adopted at a regular meeting of said Council on the Day of April 2005, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

ALTERNATE ORDINANCE – FIRST READING

City of Morgan Hill
Ordinance No., New Series
Page 2 of 5

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of April 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT A

6.36.030 Definitions. For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

A. "Agricultural zone," "commercial zone," "industrial zone" and "residential zone" mean all areas within the city zoned for agricultural uses, commercial uses, industrial uses and residential uses, respectively, as established by the official zoning ordinances of the city.

B. *"Corral" means an area enclosed by fencing for the keeping of livestock.*

B.C. "Enclosed premises" means any lot or premises so enclosed as to prevent any animal or fowl confined thereon, escaping there from, or any animal or fowl from entering thereon.

C.D. "Health officer" means the county health officer acting as the health officer of the city.

D.E. "Household pets" means and includes dogs, cats, canaries, parrots and other kindred birds and animals which are legal to possess in the state of California, that are usually or ordinarily kept as household pets.

E.F. "Livestock" means and includes horses, ponies, mules, burros, jacks and jennies, cows, bulls, calves, heifers, llamas, sheep, goats, and all other domestic or domesticated animals that are legal to possess within the state of California except swine, hogs, pigs and other household pets.

F.G. "Person" means an individual, firm, partnership or corporation, and their heirs, assigns, executors, administrators or agents.

H. *"Private use" means keeping of animals for private purposes and enjoyment and occasional sale.*

G.I. "Poultry" means and includes chickens, turkeys, ducks, geese, pigeons and all other fowl including birds which are kept in outdoor aviaries.

H.J. "Poultry ranch" means any premises, including outdoor aviaries, where a combined total of fifteen or more domestic fowl and poultry are kept, maintained, harbored or controlled by any person. Poultry under three months of age and not exceeding fifteen in number shall not be considered in computing the number of fowl on the premises.

I.K. "Public stable" means any building or structure for the keeping of two or more horses which are not owned by the occupant of the premises, and are so kept for remuneration, hire or sale.

J.L. "Rabbits and small animals" means and includes hares, hamsters, chinchillas and guinea pigs, and all types of rodents.

K.M. "Rabbit ranch" means any premises where eight or more rabbits are kept, maintained, harbored or controlled by any person. Rabbits under three months of age and not exceeding fifteen in number shall not be considered in computing the number of rabbits on the premises.

L.N. "Rear yard" means a yard extending across the full width of the lot between the main building and the rear lot line; the depth of the required rear yard shall be measured horizontally from the nearest part of the main building toward the rear lot line. (Ord. 1443 N.S. § 1, 1999; Ord. 1209 N.S. (part), 1995; Ord. 135 § 2, 1962)

6.36.050 Keeping of livestock, poultry ranch and rabbit ranch – Minimum area requirements.

Other than as allowed for keeping of livestock for private uses in residential zoning districts and on open space properties with a private residence, in accordance with Section 6.36.175 of this Chapter, in any residential and/or commercial zone, no livestock, poultry ranch or rabbit ranch shall be maintained on an area of less than one acre, and the number of livestock thereof shall not exceed a number per acre of two adult livestock in any combination of the foregoing livestock and their immature offspring ; provided, that the total number on any one lot, site, farm or ranch shall not exceed two adult livestock and their immature offspring, unless by revocable special permit of the city council after a recommendation by the planning commission that the keeping of additional livestock will not be detrimental to the health, safety and welfare of the abutting property owners.

6.36.060 Keeping of livestock, poultry ranch and rabbit ranch – Distance from residences.

Other than as allowed for keeping of livestock for private uses in residential zoning districts and on open space properties with a private residence, in accordance with Section 6.36.175 of this Chapter, all open enclosures, whether pasture land or corral, shall be not less than one hundred feet from the nearest school, church, hospital or dwelling used for human habitation, other than the residence of the owner of such livestock; provided, however, that in all cases where the distance from the nearest school, church, hospital or dwelling used for human habitation, other than the residence of the owner of such livestock, is less than two hundred feet, the person in control of the premises where the livestock is kept also shall obtain a revocable special permit for one year, or more, issued by the city council after the matter has been presented to and acted upon by the planning commission. The city council need not follow the recommendation of the planning commission. Any renewal of the special permit may be made by the council without further consideration by the planning commission. The council may impose any conditions in such permit deemed by it necessary to preserve the health, safety and welfare of the neighborhood.

6.36.070 Keeping of livestock, poultry ranch and rabbit ranch – Setbacks.

All open enclosures containing livestock, poultry ranch or rabbit ranch shall be set back at least thirty feet from any traveled street, except an alley; *except that livestock kept for private uses in residential zoning districts and on open space properties with a private residence shall be set back in accordance with the corral location approved in conjunction with issuance of a Residential Private Livestock Permit.*

6.36.090 Animal Use Permit and Residential Private Livestock Permit – Issuance.

All permits required in matters pertaining to sanitation and the preservation of public health as provided in this chapter and the laws of the state, shall be known as Animal Use Permits *and Residential Private Livestock Permits*. Permits so issued shall be in the name of the owner, operator or lessee in whose name the permit is issued, and such permits shall not run with the land.

6.36.175 Keeping of livestock for private uses in residential zoning districts and on open space properties with a private residence. Livestock may be kept in residential zoning districts and on open space properties with a private residence, subject to the issuance of a Residential Private Livestock Permit, which shall be issued by the Community Development Department subject to the following standard conditions.

- A. Livestock may only be kept for private uses.***
- B. A maximum of two adult large livestock animals (horses, cows, mules) and their immature offspring; and a maximum of four adult small livestock animals (sheep, goats, llamas) may be kept per the first 40,000 square feet of lot area. For each additional 20,000 square feet of lot area, two additional adult small livestock animals and immature offspring may be kept; and for each additional 40,000 square feet of lot area, one additional adult large livestock animal and immature offspring may be kept.***
- C. All livestock shall be securely enclosed in a corral sufficient to keep them contained. The proposed location of the corral shall be indicated on a site plan by the applicant. The corral location shall be subject to approval by the Community Development Department in conjunction with issuance of the Residential Private Livestock Permit. The Department shall notify the applicant and adjacent property owners of the proposed Permit by mail at least ten days prior to the decision of the Department, in order to receive input. The approved location of the corral shall be based on criteria relevant to the application, including but not limited to type and size of animals, existing land use and structures on site, adjacent land uses and structures, possibility of noise and odor impacts on neighbors, topography, relationship to streets and alleys, applicable fence location and height regulations, and protection of fences between the property and adjacent lots. Appeals of the decision of the Community Development Department shall be filed within 10 days, and appeals shall be considered by the Planning Commission at a noticed public hearing, and the decision of the Planning Commission regarding issuance of the Residential Private Livestock Permit shall be final.***

6.36.290 Operation without permit prohibited.

Any person who commences, conducts, carries on, transacts, engages in, runs, operates or maintains or causes, permits or allows another person to carry on any endeavor wherein sanitation and the preservation of public health are involved, and there is required an animal use permit ***or a residential private livestock permit*** by this chapter or the laws of the state, without first applying for and securing an animal use permit ***or a residential private livestock permit***, is guilty of a misdemeanor.

ORDINANCE NO. 1714, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING TEXT AMENDMENTS TO CHAPTER 6.36 (ANIMALS AND LAND USE) OF TITLE 6 (ANIMALS) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL. (ZA-04-22: CITY OF MORGAN HILL-ACREAGE REQUIRED FOR ANIMALS)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The proposed zoning amendment is consistent with the General Plan.

SECTION 2. INCORPORATING ZONING TEXT CHANGES BY REFERENCE. There hereby is attached hereto and made a part of this ordinance, a text amendment to Chapter 6.36 Animals and Land Use of Title 6 of the Morgan Hill Municipal Code, contained in the attached Exhibit "A."

SECTION 3. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 4. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 2nd Day of March 2005, and was finally adopted at a regular meeting of said Council on the Day of April 2005, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

MARCH 2ND ORDINANCE - SECOND READING

City of Morgan Hill
Ordinance No. 1714
Page 2 of 4

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1714, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of April 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT A

Section 6.36.030 Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

A. "Agricultural zone," "commercial zone," "industrial zone" and "residential zone" mean all areas within the city zoned for agricultural uses, commercial uses, industrial uses and residential uses, respectively, as established by the official zoning ordinances of the city.

B. "Corral" means an area enclosed by fencing for the keeping of livestock.

~~B.C.~~ "Enclosed premises" means any lot or premises so enclosed as to prevent any animal or fowl confined thereon, escaping there from, or any animal or fowl from entering thereon.

~~C.D.~~ "Health officer" means the county health officer acting as the health officer of the city.

~~D.E.~~ "Household pets" means and includes dogs, cats, canaries, parrots and other kindred birds and animals which are legal to possess in the state of California, that are usually or ordinarily kept as household pets.

~~E.F.~~ "Livestock" means and includes horses, ponies, mules, burros, jacks and jennies, cows, bulls, calves, heifers, llamas, sheep, goats, and all other domestic or domesticated animals that are legal to possess within the state of California except swine, hogs, pigs and other household pets.

~~F.G.~~ "Person" means an individual, firm, partnership or corporation, and their heirs, assigns, executors, administrators or agents.

H. "Private use" means keeping of animals for private purposes and enjoyment and occasional sale.

~~G.I.~~ "Poultry" means and includes chickens, turkeys, ducks, geese, pigeons and all other fowl including birds which are kept in outdoor aviaries.

~~H.J.~~ "Poultry ranch" means any premises, including outdoor aviaries, where a combined total of fifteen or more domestic fowl and poultry are kept, maintained, harbored or controlled by any person. Poultry under three months of age and not exceeding fifteen in number shall not be considered in computing the number of fowl on the premises.

~~I.K.~~ "Public stable" means any building or structure for the keeping of two or more horses which are not owned by the occupant of the premises, and are so kept for remuneration, hire or sale.

~~J.L.~~ "Rabbits and small animals" means and includes hares, hamsters, chinchillas and guinea pigs, and all types of rodents.

~~K.M.~~ "Rabbit ranch" means any premises where eight or more rabbits are kept, maintained, harbored or controlled by any person. Rabbits under three months of age and not exceeding fifteen in number shall not be considered in computing the number of rabbits on the premises.

L.N. "Rear yard" means a yard extending across the full width of the lot between the main building and the rear lot line; the depth of the required rear yard shall be measured horizontally from the nearest part of the main building toward the rear lot line. (Ord. 1443 N.S. § 1, 1999; Ord. 1209 N.S. (part), 1995; Ord. 135 § 2, 1962

6.36.175 Keeping of livestock for private uses in residential zoned districts. Livestock may be kept in residential zoning districts subject to the following conditions:

- A. Livestock may only be kept for private uses.***
- B. A maximum of two adult livestock, regardless of type, and their immature offspring, may be kept per the first 40,000 square feet of lot area. For each additional 20,000 square feet of lot area, one adult livestock, regardless of type, and its immature offspring may be kept.***
- C. All livestock shall be securely enclosed in a corral sufficient to keep them contained, which shall be located no less than fifty feet from property line. For lots of five acres and more, the setback for the corral shall be one hundred feet from property line.***



CITY COUNCIL STAFF REPORT

MEETING DATE: *April 6th, 2005*

AWARD CONTRACT FOR CONSTRUCTION OF INDOOR RECREATION CENTER AND APPROVE CONSULTANT AGREEMENTS FOR PROFESSIONAL SERVICES

RECOMMENDED ACTION(S):

1. Approve project plans & specifications.
2. Award construction contract to West Bay Builders, Inc. in the amount of \$15,778,000 for base bid & Additive Alternate #4 (Acoustical partition).
3. Authorize the City Manager to execute a consultant agreement with Biggs Cardosa Associates, Inc. for special inspections and materials testing services subject to City Attorney approval.
4. Authorize the City Manager to execute a consultant agreement with Pacific Geotechnical Engineering for earthwork observation and soil testing services subject to City Attorney approval.
5. Authorize the City Manager to execute a consultant agreement with Nova Partners, Inc for construction management services subject to City Attorney approval.

EXECUTIVE SUMMARY: In January 2005, staff advertised for General Contractors to prequalify as bidders for the construction of the Indoor Recreation Center project. In mid-February, it was determined that seven of eight who submitted were qualified to bid. Of those seven, four submitted and public bids were opened March 22nd, 2005. As noted on the attached bid results matrix, the apparent low bidder is West Bay Builders, Inc. with a total base bid of \$15,748,000, or approximately 3% under the \$16,200,000 construction estimate. Staff recommends also accepting their additive alternate #4 for the installation of the operable acoustic partition in the Multi-Purpose room for an additional \$30,000. Also attached is a project budget showing amounts previously approved by Council on November 17, 2004 and the anticipated project costs should Council choose to award the bid for \$15,778,000.

Also accepted by Council in November was the project schedule targeting final completion in August 2006. After closer review of the project design and discussions with the potential bidders, staff is recommending adding one more month for the actual construction duration. In addition, staff is recommending one additional month after Final Completion for staff "move-in" and training. This revised schedule includes fourteen inclement weather days. Should we have "worse than average" weather, the schedule would be extended accordingly. Consequently, and barring any unforeseen circumstances, the grand opening is now scheduled for September 30, 2006.

Staff has contacted the Sports Management Group to update their operational cost model based on the final design. The results of this update will be presented at the Council meeting in a separate memo from the Recreation and Community Services Manager.

Finally, it is necessary for the City to engage consultants for professional services during the construction of the Aquatics Center project as described in the attached memorandum.

FISCAL IMPACT: The current year CIP (Project #229001) has a total of \$5,803,858 which is sufficient to fund this project as recommended through the 04/05 fiscal year. If Council awards the project, the remaining funding needed to complete the project will be placed in the recommended 05/06 CIP budget. No additional funding is required.

Agenda Item #23

Prepared By:

Project Manager

Approved By:

Public Works Director

Submitted By:

City Manager



REDEVELOPMENT AGENCY/ CITY
COUNCIL STAFF REPORT

MEETING DATE: April 6, 2005

DISPOSITION OF ACTON MUSEUM

Agenda Item # 24

Approved By: _____

BAHS Director

Submitted By: _____

Executive Director

RECOMMENDED ACTION(S): Direct the Executive Director to pursue options #2 and #5 concurrently. If options #2 and #5 become infeasible, staff will pursue option #3. Staff will periodically report its progress to the Agency Board.

EXECUTIVE SUMMARY: As part of the library project, the Agency will need to relocate the Acton Museum to prepare the site for development. To meet the schedule, the structure needs to be removed by August 2005. As a result, we are seeking direction as to the disposition of the Acton Museum. The following are the options available to the Agency:

1. Demolish the building: The Acton Museum is designated a historical resource and cannot be demolished without first adopting an EIR with the appropriate findings. We do not recommend this approach due to the time and cost.
2. Sell the Acton Museum to a buyer who would relocate it in town: This option is the most cost effective, if you can find an interested buyer. However, we are pursuing this option with the Acton Farmhouse and have not received any interest from any parties. Although it is highly unlikely that this option can be accomplished within the project schedule, staff recommends pursuing it concurrently with option #5 so as to have at least determined if there is any interest in the building.
3. Buy vacant property, move/rehab the building, and sell as a market rate unit: While this option can probably be accomplished within the schedule, it would be very time consuming and the building would no longer serve a public use. We anticipate that the sale of the unit would probably cover about 80% of the out of pocket costs to purchase the property and rehab the unit. We would only pursue this option if the preferred options did not pan out. We would not recommend converting the unit to a BMR unit as a BMR buyer may not have the financial resources to maintain the historic unit.
4. Incorporate the museum into the Library site plan: This is not recommended as the museum's location would impact the retention pond and require a redesign of the site plan resulting in increased project costs and a delay in the schedule.
5. Relocate the Acton Museum to the Villa Mira Monte site: The Historical Society has indicated that it is willing to accept the structure if it does not have to pay any money out of pocket. The Historical Society initially estimated a total project cost of over a \$1,000,000 to complete the project with all required and desired on-site improvements (e.g., parking lot, landscaping). However, staff and the Society have been discussing an alternative development scenario which allows the building to be relocated with minimal on-site improvements. This scenario may be accomplished within the \$350,000 budget allocated for this project, but the Society and staff are continuing the process of preparing costs estimates and working out the details. We are recommending the Agency pursue this option.

FISCAL IMPACT: The BAHS FY04-05 Budget has allocated \$350,000 for the Acton Museum project.